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NEW DELHI, SATURDAY, AUGUST 22, 1992/SRAVANA 31, 1914

इस भाग में भिन्न पृष्ठ संपादना की जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (II) PART II—Section 3—Sub-Section (II)

(रक्षा मंत्रालय को छोड़कर) भारत सरकार के मंत्रालयों द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications issued by the Ministries of the Government of India (other than
Ministry of Defence)

विधि एवं न्याय मंत्रालय
(विधि कार्य विभाग)

सूचना

नई दिल्ली, 20 जुलाई, 1992

का.भा.. 2175--नोटरीज नियम, 1956 के नियम 6 के अनुसरण में
सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री पूर्णराज मल्होत्रा,
एडवोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक
आवेदन इस बात के लिए दिया है कि उसे करनाल जिला (हरियाणा
राज्य) में व्यवसाय करने के लिए नोटरी के रूप में नियुक्ति पर किसी
भी प्रकार का आपेक्ष इस सूचना के प्रकाशन के चौदह दिन के भीतर
लिखित रूप से मेरे पास भेजा जाए।

[सं. फा० 5(177)/92-न्यायिक]
पी.सी. कणन, सक्षम प्राधिकारी

MINISTRY OF LAW AND JUSTICE
(Department of Legal Affairs)
NOTICE

New Delhi, the 20th July, 1992

S.O. 2175.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956, that application has been made to the said Authority, under Rule

4 of the said Rules, by Shri Prithvi Raj Malhotra, Advocate for appointment as a Notary to practise in Karnal District (Haryana).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(177)/92-Judl.]

P. C. KANAN, Competent Authority

सूचना

नई दिल्ली, 20 जुलाई, 1992

का.भा.. 2176--नोटरीज नियम, 1956 के नियम 6 के अनुसरण में
सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री दर्शनसिंह मोह,
एडवोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक
आवेदन इस बात के लिए दिया है कि उसे गाजियाबाद में
व्यवसाय करने के लिए नोटरी के रूप में नियुक्ति पर किसी भी प्रकार
का आपेक्ष इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप
से मेरे पास भेजा जाए।

[सं. फा० 5(178)/92-न्यायिक]

पी.सी. कणन, सक्षम प्राधिकारी

NOTICE

New Delhi, the 20th July, 1992

S.O. 2176.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956, that application has been made to the said Authority, under Rule 4 of the said Rules, by Shri Darshanand Gaur, Advocate for appointment as a Notary to practise in Ghaziabad (U.P.).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(178)/92-Judl.]

P. C. KANAN, Competent Authority

सूचना

नई दिल्ली, 20 जुलाई, 1992

का.आ. 2177--नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री स्वर्णसिंह, एडवोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसे जालंधर (पंजाब) व्यवसाय करने के लिए नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का अपेक्ष इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाए।

[सं. फा० 5(179)/92-न्यायिक]

पी.सी. कणन, सक्षम प्राधिकारी

NOTICE

New Delhi, the 20th July, 1992

S.O. 2177.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956, that application has been made to the said Authority, under Rule 4 of the said Rules, by Shri Swarn Singh, Advocate for appointment as a Notary to practise in Jalandhar (Punjab).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(179)/92-Judl.]

P. C. KANAN, Competent Authority

सूचना

नई दिल्ली, 20 जुलाई, 1992

का.आ. 2178--नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री रविन्द्र सहाय सक्सेना, एडवोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसे बूंदी जिला बूंदी (राजस्थान) में व्यवसाय करने के लिए नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का अपेक्ष इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाए।

[सं. फा० 5(180)/92-न्यायिक]

पी.सी. कणन, सक्षम प्राधिकारी

NOTICE

New Delhi, the 20th July, 1992

S.O. 2178.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956, that application has been made to the said Authority, under Rule 4 of the said Rules, by Shri Ravindra Sahay Saxena, Advocate for appointment as a Notary to practise in Bundi, Distt. Bundi (Rajasthan).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(180)/92-Judl.]

P. C. KANAN, Competent Authority

सूचना

नई दिल्ली, 20 जुलाई, 1992

का.आ. 2179--नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री धर्म पाल रविश, एडवोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसे पहाड़ा गढ़ विभाग, जिला कुरुक्षेत्र (हरियाणा) में व्यवसाय करने के लिए नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का अपेक्ष इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाए।

[सं. फा० 5(181)/92-न्यायिक]

पी.सी. कणन, सक्षम प्राधिकारी

NOTICE

New Delhi, the 20th July, 1992

S.O. 2179.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956, that application has been made to the said Authority, under Rule 4 of the said Rules, by Shri Dharam Pal Ravish, Advocate for appointment as a Notary to practise in Pahova Sub-Division, Distt. Kurukshetra (Haryana).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(181)/92-Judl.]

P. C. KANAN, Competent Authority

सूचना

नई दिल्ली, 20 जुलाई, 1992

का.आ. 2180--नोटरीज नियम 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री सरदार सिंह यादव एडवोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसे बागपत (जिला मेरठ, उत्तर प्रदेश) में व्यवसाय करने के लिए नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का अपेक्ष इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाए।

[सं. 5(182)/92-न्यायिक]

पी.सी. कणन, सक्षम प्राधिकारी

NOTICE

New Delhi, the 20th July, 1992

S.O. 2180.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956, that application has been made to the said Authority, under Rule 4 of the said Rules, by Shri Sardar Singh Yadav, Advocate for appointment as a Notary to practise in Baghpat, Distt. Meerut (U.P.).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(182)/92-Judl.]

P. C. KANAN, Competent Authority

सूचना

नई दिल्ली, 20 जुलाई, 1992

का.भा. 2181.—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री श्रीकान्त जोशी एडवोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसे मुंबई (राजस्थान) में व्यवसाय करने के लिए नोटरी के रूप में नियुक्ति पर किया जा प्रकार का आपक्ष इस सूचना के प्रकाशन के चौदह दिन के मानर लिखित रूप में मेरे पास भेजा जाए।

[सं. फा० 5(183) 92-न्यायिक]

पी. सी. कण्णन, सक्षम प्राधिकारी

NOTICE

New Delhi, the 20th July, 1992

S.O. 2181.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956, that application has been made to the said Authority, under Rule 4 of the said Rules, by Shri Shrikant Joshi, Advocate for appointment as a Notary to practise in Jhunjhunu (Rajasthan).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(183)/92-Judl.]

P. C. KANAN, Competent Authority

गृह मंत्रालय

(आन्तरिक सुरक्षा विभाग)

(पुनर्वास प्रभाग)

नई दिल्ली, 3 जुलाई, 1992

का.भा. 2182.—निष्कांत सम्पत्ति प्रबन्ध अधिनियम, 1950 (1950 का 31) की धारा 5 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद् द्वारा गृह मंत्रालय व न्याय विभाग व पुनर्वास प्रभाग में संयुक्त सचिव श्री वी. विश्वनाथन को अधिनियम के द्वारा अथवा उसके अधीन महानिरीक्षक को सौंपे गए कार्यों के निष्पादन के उद्देश्य से निष्कांत सम्पत्ति का महानिरीक्षक नियुक्त करती है।

2. इसक द्वारा दिनांक 8-7-91 की अधिसूचना सं. 1(3)/विशेष कक्ष/90-एस.एस.-11/एस. (ख) का अधिक्रमण किया जाता है।

[सं. फा० 1(3)/विशेष कक्ष/90-एस.एस.-11/एस. (ख)]

कुलदीप राय, उप सचिव,

MINISTRY OF HOME AFFAIRS

(Department of Internal Security)

(Rehabilitation Division)

New Delhi, the 3rd July, 1992

S.O. 2182.—In exercise of the power conferred by Section 5 of the Administration of Evacuee Property Act, 1950 (31 of 1950), the Central Government hereby appoints Shri V. Viswanathan, Joint Secretary in the Ministry of Home Affairs, Department of Justice and Rehabilitation Division as the Custodian General of Evacuee Property for the purpose of performing functions assigned to such Custodian General by or under the said Act.

2. This supersedes notification No. 1(3)/Spl. Cell/90-SS.II/S(B), dated the 8th July, 1991.

[No. 1(3)/Spl Cell/90-SS.II/S(B)]

KULDIP RAI, Dy. Secy.

नई दिल्ली, 3 जुलाई, 1992

का.भा. 2183.—विस्थापित व्यक्ति (प्रतिकर तथा पुनर्वास) अधिनियम, 1954 (1954 का 44) की धारा 3 की उप धारा (i) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्द्वारा गृह मंत्रालय न्याय विभाग व पुनर्वास प्रभाग में संयुक्त सचिव श्री वी. विश्वनाथन की उक्त अधिनियम के द्वारा अथवा उसके अन्तर्गत मुख्य बन्दोबस्त आयुक्त को सौंपे गए कार्यों के निष्पादन के उद्देश्य से मुख्य बन्दोबस्त आयुक्त नियुक्त करती है।

2. इसक द्वारा दिनांक 8-7-91 की अधिसूचना सं.-1(3)/विशेष कक्ष/90-एस.एस.-11(क) का अधिक्रमण किया जाता है।

[संख्या-1(3)/विशेष कक्ष/90-एस.एस. 11/(एस. (क))]

कुलदीप राय, उप सचिव

New Delhi, the 3rd July, 1992

S.O. 2183.—In exercise of the power conferred by Sub-Section (i) of Section 3 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), the Central Government hereby appoints Shri V. Viswanathan, Joint Secretary in the Ministry of Home Affairs, Department of Justice and Rehabilitation Division as Chief Settlement Commissioner for the purpose of performing the functions assigned to such Chief Settlement Commissioner by or under the said Act.

2. This supersedes Notification No. 1(3)/Spl.Cell/90-SS.II/Settlement (A) dated the 8th July, 1991.

[No. 1(3)/Spl.Cell/90-SS.II/S(A)]

KULDIP RAI, Dy. Secy.

वित्त मंत्रालय

(आर्थिक कार्य विभाग)

(बैंकिंग प्रभाग)

नई दिल्ली, 31 जुलाई, 1992

का.भा. 2184.—राष्ट्रीयकृत बैंक (प्रबन्ध और प्रकीर्ण उपबन्ध) स्कीम, 1980 के खण्ड 5 के उपखण्ड (1), खण्ड 7 और खण्ड 8 के उपखण्ड (1) के साथ पठित खण्ड 3 के उपखण्ड (क) के अनुसरण में, केन्द्रीय सरकार, भारतीय रिजर्व बैंक के साथ परामर्श करने के पश्चात्, एतद्द्वारा श्री के.एस. बैस, आई ए एस (पंजाब:1961) को 1 अगस्त, 1992 से या उनके द्वारा कार्यभार ग्रहण करने की तारीख से, जो भी बाव में हो, अगला आदेश जारी होने तक, तत्काल रूप से खपाए जाने (एबजार्शन) के आधार पर पंजाब एण्ड सिंध बैंक के अध्यक्ष एवं प्रबन्ध निदेशक के रूप में नियुक्त करती है।

[संख्या एफ 9/22/92-बी.ओ.-1)]

के जे गोएल निदेशक

MINISTRY OF FINANCE

(Department of Economic Affairs)

(Banking Division)

New Delhi, the 31st July, 1992

S.O. 2184.—In pursuance of sub-clause (a) of clause 3 read with sub-clause (1) of clause 5, clause 7 and sub-clause (1) of clause 8 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1980, the Central Government, after consultation with the Reserve Bank of India, hereby appoints Shri K. S. Bains, IAS (Punjab: 1961) as the Chairman and Managing Director of the Punjab and Sind Bank, for the period from the 1st August, 1992, or the date of his taking charge, whichever is later, and until further orders, on immediate absorption basis.

[No. 9/22/92-B.O.I]

K. G. GOEL, Director

भारतीय रिज़र्व बैंक
(ग्रामीण ऋणयोजना और ऋण विभाग)
(केन्द्रीय कार्यालय)

बम्बई, 27 जुलाई, 1992

का.भ्रा. 2185—भारतीय रिज़र्व बैंक अधिनियम, 1934 की धारा 42 की उपधारा (7) तथा बैंककारी विनियमन अधिनियम, 1949 को धारा 56 के साथ पठित धारा 24क द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारतीय रिज़र्व बैंक इसके द्वारा निदेश देता है कि महाराष्ट्र स्टेट को-ऑपरेटिव बैंक लि. अनिवार्य (प्रस्थावर्तनीय) रुपया जमायोजना के अंतर्गत संचालित जमा-राशियों की गणना नकदी प्रारक्षित अमुपात सांविधिक तरलता अमुपात के प्रयोजनार्थ शुद्ध मांग एवं भिदादी देयताओं के भाग के रूप में 24 जुलाई, 1992 को समाप्त पञ्चाङ्गे से नहीं कर सकेगी।

[ग्रामाश्रमि सं. आरएफ 86/ए 12(24)-92/93]

सा. सी. तारापोर, उप. गवर्नर

RESERVE BANK OF INDIA
(Rural Planning and Credit Department)
(Central Office)

Bombay, the 27th July, 1992

S.O. 2185.—In exercise of the powers conferred by Sub-Section (7) of Section 42 of the Reserve Bank of India Act, 1934 and Section 24A read with Section 56 of the Banking Regulation Act, 1949 Reserve Bank of India hereby directs that the deposits under the non-resident (non-repatriable) rupee deposit scheme mobilised by Maharashtra State Co-operative Bank Ltd., shall not be considered as part of Net Demand and Time Liabilities for the purpose of Cash Reserve Ratio/Statutory Liquidity Ratio requirements from the fortnight ended 24th July, 1992.

[Ref. RPCD No. RF. 86/A 12(24)-92/93]

S. S. TARAPORE, Dy. Governor

जल संसाधन मंत्रालय

नई दिल्ली, 30 जुलाई, 1992

का.भ्रा. 2186—केन्द्रीय सरकार, जल संसाधन मंत्रालय, राजभाषा (संघ) के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में एतद्वारा इस मंत्रालय के अधीनस्थ कार्यालय नामक केन्द्रीय भूमिजल बोर्ड के जयपुर स्थित कार्यालय, जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है।

उक्त कार्यालय का पता है—

केन्द्रीय भूमिजल बोर्ड, सी-13,

सवाई जयसिंह मार्ग, बनी पाक, जयपुर।

[सं. 1/92-हिन्दी]

जोगिन्दर सिंह, उप. सचिव

MINISTRY OF WATER RESOURCES

New Delhi, the 30th July, 1992

S.O. 2186.—In pursuance of Sub-Rule (4) of Rule 10 of the Official Language (use for official purposes of the Union) Rules, 1976, the Central Government in the Ministry of Water Resources hereby notifies the Jaipur office of the Central Ground Water Board, which is a subordinate office of the Ministry, where more than 80 per cent staff has acquired working knowledge of Hindi. The address of this office is as under—

Central Ground Water Board C-15, Sawai Jai Singh Highway, Banipark, Jaipur.

[No. 1/2/92-Hindi]

JOGINDER SINGH, Dy. Secy

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 28 जुलाई, 1992

का.भ्रा. 2187—केन्द्रीय सरकार को यह प्रतीत होता है कि लोक हित में ऐसा आवश्यक है कि गुजरात राज्य में कांडला से पंजाब राज्य में भटिन्दा तक रास्तस्थान और हरियाणा से होकर पेट्रोलियम के परिवहन के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड द्वारा पाइपलाइन बिछाई जाए।

और ऐसा प्रतीत होता है कि उक्त पाइपलाइन बिछाने के प्रयोजनों के लिए इस अधिसूचना से उपाबद्ध अनुसूची में वर्णित भूमि के उपयोग के अधिकार का अर्जन करना आवश्यक है, अतः केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए हुए, उनमें उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है।

उक्त अनुसूची में वर्णित भूमि में हित बद्ध कोई व्यक्ति, राजपत्र में यथा प्रकाशित इस अधिसूचना की प्रतियां जनता को उपलब्ध करा दिए जाने की तारीख से 21 दिन के भीतर उनमें उपयोग के अधिकार का अर्जन या भूमि में पाइपलाइन बिछाने में आपत्ति लिखित रूप में श्री एन. एच. कुम्हार, सक्षम प्राधिकारी, इंडियन ऑयल कॉर्पोरेशन लिमिटेड कांडला-भटिन्दा पाइपलाइन परियोजना, 'किरम कोर्ट' प्लाट नं. 85 सेक्टर-I गांधीधाम (कच्छ) गुजरात को कर सकेगा।

अधिसूचना

तहसील अंजार	जिला कच्छा	राज्य गुजरात		
गांव का नाम	सर्वेक्षण संख्या	क्षेत्रफल		
		हेक्टेयर	घर	मीटर
1	2	3	4	5
बरसाणा	77	00	02	70
	78	00	10	25
	79	00	01	04

[आर-31015/5/92-ओ. आर.-I]

कुलवीर सिंह, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 28th July, 1992

S.O. 2187—Whereas, it appears to the Central Government that it is necessary in the public interest that for the transport of petroleum from Kandla in the State of Gujarat to Bhatinda in the State of Punjab, via Rajasthan and Haryana, pipelines should be laid by the Indian Oil Corporation Limited;

And whereas it appears that for the purpose of laying such pipelines it is necessary to acquire the right of user in the land described in the Schedule annexed to this notification,

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein,

Any person interested in the land described in the said Schedule may within 21 days from the date on which the copies of this notification, as published in the Gazette of India, are made available to general public, object in writing to the acquisition of the right of user therein or laying of the pipelines under the land to Shri N. H. Kumbhar, Competent Authority.

Indian Oil Corporation Ltd., Kandla Bhatinda Pipeline Project, "Kiran Court", Plot No. 85, Sector 1, Gandhidham, (Kachchh), Gujarat :-

SCHEDULE

Tehsil : ANJAR District : KACHCHH State : GUJARAT

Name of Village	Survey No.	Area		
		Hectare	Are	Square metres
1	2	3	4	5
Varsana	77	0	02	70
	78	0	10	25
	79	0	01	04

[No R-31015/5/92/C R I]
KULDIP SINGH, Under Secy.

नई दिल्ली, 28 जुलाई, 1992

का.प्रा. 2188-केन्द्रीय सरकार को यह प्रतीत होता है कि लोक हित में ऐसा आवश्यक है कि गुजरात राज्य में कांडला से पंजाब राज्य में भटिन्डा तक राजस्थान और हरियाणा से होकर पेट्रोलियम के परिवहन के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड द्वारा पाइपलाइन बिछाई जाए।

और ऐसा प्रतीत होता है कि उक्त पाइपलाइन बिछाने के प्रयोजनों के लिए इस अधिसूचना में वर्णित भूमि के उपयोग के अधिकार का अर्जन करना आवश्यक है, अतः केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उनमें उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है।

उक्त अनुसूची में वर्णित भूमि में हितवद्ध कोई व्यक्ति, राजपत्र में यथा प्रकाशित इस अधिसूचना की प्रतियां जनता को उपलब्ध करा दिए जाने की तारीख से 21 दिन के भीतर उनमें उपयोग के अधिकार का अर्जन या भूमि में पाइपलाइन बिछाने में आपत्ति लिखित रूप में श्री एन. एच. कुम्हार, सहाय प्राधिकारी, इंडियन ऑयल कॉर्पोरेशन लिमिटेड, कांडला-भटिन्डा पाइपलाइन परियोजना "किरन कोर्ट" प्लॉट नं. 85 सेक्टर-1, गांधीधाम (कच्छ) गुजरात को कर सकेगा।

अनुसूची

तहसील : अचाउ	जिला : कच्छ	राज्य : गुजरात
गांव का नाम	सर्वेक्षण संख्या	क्षेत्रफल
		हेक्टेयर भार वर्ग मीटर
3	2	3 4 5
नानी बीरई	394	00 41 50
	393/2	00 33 10
	393/1	00 01 40
	392/1	00 20 34
	392/2	10 10 40

[सं. प्रा. 31015/5/92-ओ.प्रा.-I]

कुलदीप सिंह, अवर सचिव

New Delhi, the 28th July, 1992

S.O. 2188.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of petroleum from Kandla in the State of Gujarat to Bhatinda in the State of Punjab, via Rajasthan and Haryana, pipelines should be laid by the Indian Oil Corporation Limited;

And whereas it appears that for the purpose of laying such pipelines it is necessary to acquire the right of user in the land described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person interested in the land described in the said Schedule may within 21 days from the date on which the copies of this notification, as published in the Gazette of India, are made available to general public, object in writing to the acquisition of the right of user therein or laying of the pipelines under the land to Shri N. H. Kumbhar, Competent Authority, Indian Oil Corporation Ltd. Kandla Bhatinda Pipeline Project, "Kiran Court", Plot No. 85, Sector 1, Gandhidham, (Kachchh), Gujarat :—

SCHEDULE

Tehsil : BHACHAU District : KACHCHH State : GUJARAT

Name of Village	Survey No.	Area		
		Hectare	Are	Square metres
1	2	3	4	5
Nani Chirai	394	0	41	50
	393/2	0	33	10
	393/1	0	01	40
	392/1	0	20	34
	392/2	0	10	40

[No. R-31015/5/92/O.R.I.]
KULDIP SINGH, Under Secy.

नई दिल्ली, 28 जुलाई, 1992

का.प्रा. 2189-केन्द्रीय सरकार को यह प्रतीत होता है कि लोक हित में ऐसा आवश्यक है कि गुजरात राज्य में कांडला से पंजाब राज्य में भटिन्डा तक राजस्थान और हरियाणा से होकर पेट्रोलियम के परिवहन के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड द्वारा पाइपलाइन बिछाई जाए:

और ऐसा प्रतीत होता है कि उक्त पाइपलाइन बिछाने के प्रयोजनों के लिए इस अधिसूचना में वर्णित भूमि के उपयोग के अधिकार का अर्जन करना आवश्यक है अतः केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उनमें उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है।

उक्त अनुसूची में वर्णित भूमि में हितवद्ध कोई व्यक्ति, राजपत्र में यथा प्रकाशित इस अधिसूचना की प्रतियां जनता को उपलब्ध करा दिए जाने की तारीख से 21 दिन के भीतर उनमें उपयोग के अधिकार का अर्जन या भूमि में पाइपलाइन बिछाने में आपत्ति लिखित रूप में श्री एन. एच. कुम्हार, सहाय प्राधिकारी, इंडियन ऑयल कॉर्पोरेशन लिमिटेड, कांडला-भटिन्डा पाइपलाइन परियोजना, "किरन कोर्ट" प्लॉट नं. 85, सेक्टर-1, गांधीधाम (कच्छ) गुजरात को कर सकेगा।

अनुसूची				
तहसील : रापर	जिला : कच्छ	राज्य : गुजरात		
गाँव का नाम	सर्वेक्षण संख्या	क्षेत्रफल		
		हेक्टेयर	घर	वर्ग मीटर
1	2	3	4	5
देवरवा	152/3	00	11	14
	152/1	00	02	34
	151	00	13	68
लाखागढ़	163/2	00	04	50
	163/3		09	00
	162	00	43	20
	164/2	00	09	90
	171	00	45	00
	172/1	00	18	00
	180	00	45	00
	73	00	46	80
	72	00	21	60
	76/1	00	07	20
	76/2	00	17	10
	51	00	16	20
	53	00	19	80
	48/1	00	19	60
	48/2	00	03	24
	45	00	09	90
भाटेश्वर	597/2	00	13	50
	597/1	00	07	20
	598/1	00	05	40
	552/2	00	01	35
	552/1	00	10	80
	553/2	00	08	10
	554/3	00	16	20
	554/1	00	23	40
	555	00	20	70
	558/	00	23	40
भाटेश्वर (क्रमण.)	559	0	34	20
	562/2	00	09	90
	562/2	00	36	00
	563/1	00	30	60
	564	00	32	40
	497/2	00	10	80
	496	00	18	00
	495	0	09	00
	493	00	18	00
	494	00	10	80
	491	00	37	80
	488	00	07	20
	454	00	17	10
	455	00	26	10
	458	01	04	40
	447/1	00	12	60
	447/2	00	30	60
	490	00	05	40

1	2	3	4	5
बांभणसर	93	00	07	56
	87	00	28	26
	86	00	07	50
	80	00	49	14
	64	00	32	04
	55	00	41	59

[सं. 31015/5/92-ओ.आर.-I]

कु लदाप गिह, अवर सचिव

New Delhi, the 28th July, 1992

2189—Whereas, it appears to the Central Government that it is necessary in the public interest that for the transport of petroleum from Kandla in the State of Gujarat to Bhatinda in the State of Punjab, via Rajasthan and Haryana, pipelines should be laid by the Indian Oil Corporation Limited;

And whereas it appears that for the purpose of laying such pipelines it is necessary to acquire the right of user in the land described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person interested in the land described in the said Schedule may within 21 days from the date on which the copies of this notification, as published in the Gazette of India, are made available to general public, object in writing to the acquisition of the right of user therein or laying of the pipelines under the land to Shri N. H. Kumbhar, Competent Authority, Indian Oil Corporation Ltd., Kandla Bhatinda Pipeline Project, "Kiran Court", Plot No. 85, Sector 1, Gandhidham, (Kachchh), Gujarat:—

SCHEDULE

Tehsil : RAPAR District : KACHH State : GUJARAT					
Name of Village		Survey No.		Area	
				Hectare	Are Square metres
1	2	3	4	5	6
Dedra	152/3		00	13	14
	152/1		00	02	34
	151		00	13	68
Lakhagadh	165/2		00	04	50
	163/3		00	09	00
	162		00	43	20
	164/3		00	09	90
	171		00	45	00
	172/1		00	18	00
	180		00	45	00
	73		00	46	80
	72		00	21	60
	76/1		00	07	20
	76/2		00	17	10
	51		00	16	20
	53		00	19	80
	48/1		00	19	80
	48/2		00	19	24
	45		00	09	90

1	2	3	4	5
Adesar	597/2	00	13	50
	597/1	00	07	20
	598/1	00	05	40
	552/2	00	01	35
	552/1	00	10	80
	553/2	00	08	10
	554/3	00	16	20
	554/1	00	13	40
	555	00	20	71
	558	00	23	40
	559	00	34	20
	562/2	00	09	90
	562/1	00	36	00
	563/1	00	30	60
	564	00	32	40
	497/2	00	10	80
	496	00	18	00
	495	00	09	00
	493	00	18	00
	494	00	10	80
	491	00	37	80
	488	00	07	20
	454	00	17	10
	455	00	26	10
	458	01	04	40
	447/1	00	12	60
	447/2	00	30	60
	490	00	05	40
Bambhansar	93	00	07	56
	87	00	28	26
	86	00	07	56
	60	00	49	14
	64	00	32	04
	55	00	41	58

[No. R-31015/5/92/O.R.I.]

KULDIP SINGH, Under Secy.

गुजरात

नई दिल्ली, 28 जुलाई, 1992

का. आ. 2190—केंद्र सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962 (1962 का 50) की धारा 3 की उपधारा (1) के अधीन जारी और भारत के राजपत्र भाग-2, खण्ड-3, उपखण्ड (ii) पृष्ठ संख्यांक 4502 से 4505 में प्रकाशित भारत सरकार, पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना का.आ. 2686, दिनांक 13 अक्टूबर, 1990 द्वारा इस अधिसूचना से सलग्न अनुसूची में वर्णित भूमि का अधिग्रहण करने के अपने आशय की सूचना दी थी।

और केंद्र सरकार की जानकारी में यह बात लाई गई कि राजपत्र में प्रकाशित उपरोक्त अधिसूचना में मुद्रण की कुछ गलतियाँ हैं।

अतः अब केंद्रीय सरकार उक्त अधिनियम की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिसूचना से सलग्न अनुसूची में निम्नलिखित संशोधन करती है।

पृष्ठ संख्या 4502 दाहिने भाग में, सर्वे नं. 393/1 के सामने गांव के नाम के कॉलम (1) में लिखें, 'तानी चीरई' स्थान पर 'तानी चीरई' पढ़ें।

पृष्ठ संख्या 4503 के बाये भाग में, कॉलम (2) में सर्वे नम्बर 4 के सामने लिखें, 'मोटी चीरई' को उम्मी कॉलम में सर्वे नम्बर 546 के सामने पढ़ें।

पृष्ठ संख्या 4503 के बाये भाग में, अंतिम पंक्ति पर सर्वे नम्बर 326 के सामने कॉलम (1) में 'चोपडा' पढ़ें।

पृष्ठ संख्या 4503 के दाहिने भाग में, सर्वे नं. 1202 के सामने कॉलम (1) में 'भचाऊ' पढ़ें।

पृष्ठ संख्या 4503 के दाहिने भाग में, सर्वे नम्बर 1880 के सामने कॉलम (1) में लिखें 'भचाऊ' के स्थान पर 'भचाई' पढ़ें।

पृष्ठ संख्या 4503 के दाहिने भाग में, कॉलम (1) के सर्वे नम्बर 807/1 के सामने लिखें 'बोधा' के स्थान पर, उम्मी कॉलम में सर्वे नम्बर 805 के सामने 'बोध' पढ़ें।

पृष्ठ संख्या 4504 के बाये भाग में, छाउखाला के कॉलम 2 में लिखें सर्वे नम्बर '835' के स्थान पर '825' पढ़ें।

पृष्ठ संख्या 4504 के दाहिने भाग में, सबसे पहले पंक्ति में सर्वे नम्बर 194 के सामने कॉलम (1) में लिखें 'घराणा' को उसी कॉलम में दूसरे पंक्ति में सर्वे नम्बर 195 के सामने पढ़ें।

पृष्ठ संख्या 4504 के दाहिने भाग में, घराणा गांव के सर्वे नम्बर 66 के सामने कॉलम (4) में लिखें, '15' के स्थान पर '16' पढ़ें।

पृष्ठ संख्या 4504 के दाहिने भाग में, घराणा गांव के सर्वे नम्बर 54/1 के सामने कॉलम (3) में लिखें, '50' के स्थान पर '00' पढ़ें।

पृष्ठ संख्या 4504 के दाहिने भाग में, घराणा गांव के कॉलम (2) में, सर्वे नम्बर '553' के स्थान पर '55/3' पढ़ें।

पृष्ठ संख्या 4504 के दाहिने भाग में, घराणा गांव के सर्वे नम्बर 533 के सामने कॉलम (3) पर '50' के स्थान पर '00' पढ़ें।

पृष्ठ संख्या 4504 के दाहिने भाग में, लाकड़िया गांव के सर्वे नम्बर 758 के सामने कॉलम (3) में लिखें, '50' के स्थान पर '00' पढ़ें।

पृष्ठ संख्या 4505 के बाएं भाग में, सर्वे नम्बर 822 के सामने कॉलम (3) में लिखें, '50' के स्थान पर '9/00' पढ़ें।

पृष्ठ संख्या 4505 के बाये भाग में, सर्वे नम्बर 1091/1 के सामने, कॉलम (4) में लिखें, '50' के स्थान पर '00' पढ़ें।

पृष्ठ संख्या 4505 के दाहिने भाग में, ऊपर से चौथी पंक्ति पर सर्वे नम्बर 708 के सामने कॉलम (3) में लिखें '05' के स्थान पर '00' पढ़ें।

पृष्ठ संख्या 4505 के दाहिने भाग में, ऊपर से दसवीं पंक्ति पर सर्वे नम्बर 388 के सामने कॉलम (3) में लिखें, '77' के स्थान पर '00' पढ़ें।

पृष्ठ संख्या 4505 के दाहिने भाग में, सर्वे नम्बर 377/1 के सामने कॉलम (1) में लिखें, 'लाकड़िया' के स्थान पर 'शिवलखा' पढ़ें।

पृष्ठ संख्या 4505 के दाहिने भाग में, लाकड़िया गांव के कॉलम (2) में लिखें, सर्वे नम्बर '300' के स्थान पर '380' पढ़ें।

पृष्ठ संख्या 4505 के दाहिने भाग में, लाकड़िया गांव के सर्वे नम्बर 323 के सामने, कॉलम (3) में लिखें '10' के स्थान पर '00' पढ़ें।

पृष्ठ संख्या 4505 के दाहिने भाग में, लाकड़िया गांव के सर्वे नम्बर 344/1 के सामने कॉलम (4) पर लिखें '30' के स्थान पर '13' पढ़ें -

ऐसी भूमि में जिसका बाबत उपरोक्त संशोधन जारी किया गया है, हितबद्ध कोई व्यक्ति इस अधिसूचना के जारी किए जाने के इक्कीस दिन के भीतर उक्त भूमि के सम्पूर्ण या किसी भाग के या उक्त ऐसी भूमि में या इस पर किसी अधिकार के अर्जित किए जाने के विरुद्ध उक्त अधिनियम की धारा 5 की उपधारा (1) के निबंधनों के अनुसार आप्रोप कर सकेगा।

स्पष्टीकरण : केवल इस अधिसूचना के द्वारा संशोधित गांव के नाम, खसरा संख्या व क्षेत्रफल की बाबत उक्त अधिनियम की धारा 5(1) के निबंधनों के अनुसार इक्कीस दिन की उक्त अवधि यह अधिसूचना जारी की जाने की तारीख से प्रारम्भ होगी।

[संख्या शो-31015/5/92-शो.प्रार-1]

कुलदीप सिंह, प्रवर सचिव

CORRIGENDUM

New Delhi, the 28th July, 1992

S.O. 2190.—Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas No. S.O. 2686, dated the 13th October, 1990, published in the Gazette of India, Part II, Section 3, Sub-section (ii) at pages 4505 to 4508, issued under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government gave notice of its intention to acquire the lands specified in the Schedule appended to that notification;

And whereas it has been brought to the notice of the Central Government that certain errors of printing nature have occurred in the publication of the said notification in the Gazette;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the said Act, the Central Government hereby amends the Schedule appended to the said notification as follows :

at page 4506, in village Motichirai, in column 3, against survey no. 199, for "90" read "00";

at page 4507, in column 1, for the village name "Garna" read "Garana", in column 2, for survey no. "121/1" read "121/2";

at page 4508, in village Shivilakha, in column 1, against survey no. 377/1, the word "Lakadiya" shall be omitted, in column (2), for survey no. "389" read "379".

Any person interested in any land in respect of which the above amendment has been issued, may within twenty one days of the issue of this notification, object to the acquisition of the whole or any part of the said land or any right in or over such land in terms of sub-section (1) of section 5 of the said Act.

Explanation.—In respect of the lands, survey numbers and area amended through this notification only, the said period of twenty one days in terms of sub-section (1) of section 5 of the said Act shall start running from the date of issue of this notification.

[No. R-31015/5/92-O.R.I.]

KULDIP SINGH, Under Secy.

गुडि पत्र

नई दिल्ली, 28 जुलाई, 1992

का.प्र. 2191—केन्द्र सरकार ने पेट्रोलियम और खनिज पाइप लाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962 (1962 का 50) की धारा 3 की उपधारा (1) के अधीन जारी और भारत के राजपत्र भाग-2, खण्ड-3, उपखण्ड (ii) पृष्ठ संख्यांक 4508 से 4509 में प्रकाशित मातर सरकार, पेट्रोलियम और प्राकृतिक

गैस मंत्रालय की अधिसूचना का. प्र. 2687 दिनां 13 अक्टूबर, 1990 द्वारा इस अधिसूचना से संलग्न अनुसूची में वर्णित भूमि का अधिग्रहण करने के अर्जने आशय की सूचना थी।

और केन्द्र सरकार की जानकारी में यह बात साई गई कि राजपत्र में प्रकाशित उपरोक्त अधिसूचना में मृदुल की कुछ गलतियाँ हैं।

प्र. अब केन्द्रीय सरकार उक्त अधिनियम की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिसूचना से संलग्न अनुसूची में निम्नलिखित संशोधन करती है।

पृष्ठ संख्या 4508 पर गांव के नाम के कालम में लिखे "मीठगौहर" के स्थान पर "गाठरोहर" पढ़ें।

पृष्ठ संख्या 4509 पर पंक्ति 7 पर "चुड़वा" गांव के क्षेत्रफल हेक्टर के कालम में "09" के स्थान पर "00" पढ़ें।

पृष्ठ संख्या 4509 पर पंक्ति 25 पर सर्वे सम्बर कालम में "2001" के स्थान पर "200/1" पढ़ें।

पृष्ठ संख्या 4509 पर गांव के नाम के कालम में लिखे "बरवाना" के स्थान पर "बरसाना" पढ़ें।

ऐसी भूमि में जिसका बाबत उपरोक्त संशोधन जारी किया है, हितबद्ध कोई व्यक्ति अधिसूचना के जारी किए जाने के इक्कीस दिन के भीतर उक्त भूमि के सम्पूर्ण या किसी भाग के या उक्त ऐसी भूमि में या इस पर किसी अधिकार के अर्जित किए जाने के विरुद्ध उक्त अधिनियम की धारा 5 की उपधारा (1) के निबंधनों के अनुसार आप्रोप कर सकेगा।

स्पष्टीकरण : केवल इस अधिसूचना के द्वारा संशोधित गांव के नाम, खसरा सं. व क्षेत्रफल की बाबत उक्त अधिनियम की धारा (1) के निबंधनों के अनुसार इक्कीस दिन की उक्त अवधि यह अधिसूचना जारी की जाने की तारीख से प्रारम्भ होगी।

[संख्या: प्रार-31015/5/92-ओ.प्रार-1]

कुलदीप सिंह, प्रवर सचिव

CORRIGENDUM

New Delhi, the 28th July, 1992

S.O. 2191.—Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas No. S.O. 2687, dated the 13th October, 1990, published in the Gazette of India, Part II, Section 3, Sub-section (ii) at pages 4509 to 4510, issued under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government gave notice of its intention to acquire the lands specified in the Schedule appended to that notification;

And whereas it has been brought to the notice of the Central Government that certain errors of printing nature have occurred in the publication of the said notification in the Gazette;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the said Act, the Central Government hereby amends the Schedule appended to the said notification as follows :

at page 4510, in column 1, for the word "Padaa" read "Padana".

Any person interested in any land in respect of which the above amendment has been issued, may within twenty one days of the issue of this notification, object to the acquisition of the whole or any part of the said land or any right in or over such land in terms of sub-section (1) of section 5 of the said Act.

Explanation.—In respect of the lands, survey numbers and area amended through this notification only, the said period of twenty one days in terms of sub-section (1) of section 5 of the said Act shall start running from the date of issue of this notification.

[No. R-31015/5/92-O.R.I.]
KULDIP SINGH, Under Secy.

अतिरिक्त

नई दिल्ली, 23 जुलाई, 1992

का.आ. 2192—केन्द्र सरकार ने पेट्रोलियम और खनिज पाइप लाइन (भूमि में उपयोग के अधिकार का अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) के अधीन जारी और भारत के राजपत्र भाग-2, खण्ड-3, उपखण्ड (ii) पृष्ठ संख्या 4637 से 4639 में प्रकाशित भारत सरकार, पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना का.आ. 2781, दिनांक 27 अक्टूबर 90 द्वारा इस अधिनियम में संलग्न अनुसूची में वर्णित भूमि का अधिग्रहण करने के अपने आदेश को सूचना दी थी।

और केन्द्र सरकार की जानकारी में यह बात आई गई कि राजपत्र में प्रकाशित उपरोक्त अधिसूचना में त्रुटि का कुछ स्थानों पर।

अतः अब केन्द्र सरकार उक्त अधिनियम की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिसूचना में संलग्न अनुसूची में निम्नलिखित संशोधन करना है।

पृष्ठ संख्या 4637 पर नानापुरा गांव के वर्गमीटर कॉलम में पंक्ति 31 पर '53' के स्थान पर '50' पढ़ें।

पृष्ठ संख्या 4637 पर राखतपुर गांव के आर कॉलम में पंक्ति 16 पर '26' के स्थान पर '38' पढ़ें।

पृष्ठ संख्या 4638 पर सातुन गांव के सर्वे तम्बल कॉलम में पंक्ति 45 पर '160' के स्थान पर '169/3' पढ़ें।

पृष्ठ संख्या 4638 पर सरकरपुरा गांव के आर कॉलम में पंक्ति 2 पर '12' के स्थान पर '12' पढ़ें।

पृष्ठ संख्या 4638 पर गांव के नाम के कॉलम में 'नावापोदला' के स्थान पर 'नानीपीपला' पढ़ें।

पृष्ठ संख्या 4638 पर नानीपीपला गांव के सर्वे तम्बल कॉलम में पंक्ति 31 पर '29' के स्थान पर '31' पढ़ें।

ऐसा भूमि में जितका बावन उतनाक। संशोधन जारी किया गया। जितना कोई व्यक्ति इस अधिसूचना के अंतर्गत जानें के अधिकार दिन के भीतर उक्त भूमि के सम्पूर्ण या किसी भाग के या उक्त भूमि में या इस पर किसी अधिकार के अधिकार किए जाने के विषय उक्त अधिनियम की धारा 5 की उपधारा (1) के निबंधनों के अनुसार अधिग्रहण कर लेगा।

स्पष्टीकरण: केवल इन अधिसूचना के द्वारा संशोधित गांव के नाम, खारा सं. व क्षेत्रफल का बावन उक्त अधिनियम की धारा 5(1) के निबंधनों के अनुसार अधिकार दिन का उक्त अधिग्रहण करने की जाने की तारीख से प्रारम्भ होगी।

[संख्या आ. 31015/5/92-ओ.आर.1]

कुलदीप सिंह, अतिरिक्त

CORRIGENDUM

New Delhi, the 28th July, 1992

S.O. 2192.—Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas No. S.O. 2781, dated the 27th October, 1990, published in the Gazette of India, Part II Section 3, Sub-section (ii) 2020 GI/92—2

at pages 4638 to 4640 issued under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government gave notice of its intention to acquire the lands specified in the Schedule appended to that notification;

And whereas it has been brought to the notice of the Central Government that certain errors of printing nature have occurred in the publication of the said notification in the Gazette;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the said Act, the Central Government hereby amends the Schedule appended to the said notification as follows:

at page 4639, in line no. 35, in village 'Shinad' for survey no. "208" read "288".

at page 4639, in the schedule, in village Dharavadi, against survey no. 103, column 5, for "74" read "94", against survey no. 106, in column 5, for "90" read "10", in column 2, for survey no. "273" read "275", in village Nanapura, against survey no. 108, for "99" read "29".

at page 4640, in column 1, for the word "Manipali" read "Nanipipali".

Any person interested in any land in respect of which the above amendment has been issued, may within twenty one days of the issue of this notification, object to the acquisition of the whole or any part of the said land or any right in or over such land in terms of sub-section (1) of section 5 of the said Act.

Explanation.—In respect of the lands, survey numbers and area amended through this notification only, the said period of twenty one days in terms of sub-section (1) of section 5 of the said Act start running from the date of issue of this notification.

[No. R-31015/5/92-O.R.I.]

KULDIP SINGH, Under Secy.

अतिरिक्त

नई दिल्ली, 28 जुलाई, 1992

का.आ. 2192—केन्द्र सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) के अधीन जारी और भारत के राजपत्र भाग-2, खण्ड-3 उपखण्ड (ii) पृष्ठ संख्या 4781 से 4784 में प्रकाशित भारत सरकार, पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना का.आ. 2846, दिनांक 10 नवम्बर, 90 द्वारा इस अधिनियम में संलग्न अनुसूची में वर्णित भूमि का अधिग्रहण करने के अपने आदेश को सूचना दी थी।

और केन्द्र सरकार की जानकारी में यह बात आई गई कि राजपत्र में प्रकाशित उपरोक्त अधिसूचना में त्रुटि का कुछ स्थानों पर।

अतः अब केन्द्र सरकार उक्त अधिनियम की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिसूचना में संलग्न अनुसूची में निम्नलिखित संशोधन करना है।

पृष्ठ संख्या 4783 पर "नावावावावावा" गांव के सर्वे तम्बल कॉलम में पंक्ति 39 पर "331" के स्थान पर "311" पढ़ें।

पृष्ठ संख्या 4783 पर गांव के नाम के कॉलम में 'बलीपुर' के स्थान पर "खलीपुर" पढ़ें।

पृष्ठ संख्या 4783 पर खलीपुर गांव के आर और वर्गमीटर कॉलम में "96" और "83" के स्थान पर "82" और "10" पढ़ें।

पृष्ठ संख्या 4783 पर ओझवा गांव के सर्वे तम्बल कॉलम में पंक्ति 27 पर "225" के स्थान पर "255" पढ़ें।

पृष्ठ संख्या 4784 पर ओडवा गांव के आर कॉलम में पंक्ति 2 पर "99" के स्थान पर "00" पढ़ें।

पृष्ठ संख्या 4784 पर खानपुरा गांव के सर्वे नं० 337 में "337" के स्थान पर "357" पढ़ें।

ऐसी भूमि में जिसकी वादन उपरोक्त संशोधन जारी किया गया है हितधर कोई व्यक्ति इस अधिसूचना के जारी किए जाने के इत्तफाक दिन के भीतर उक्त भूमि के सम्पूर्ण या किसी भाग के या उक्त ऐसी भूमि में या इस पर किसी अधिकार के अर्जन किए जाने के विरुद्ध उक्त अधिनियम की धारा 5 की उपधारा (1) के निबंधनों के अनुसार आपेक्ष कर सकते हैं।

स्पष्टीकरण. केवल इस अधिसूचना के द्वारा संशोधित गांव के नाम, जिनका सं० व क्षेत्रफल की बाबत उक्त अधिनियम की धारा 5 (1) के निबंधनों के अनुसार इत्तफाक दिन की उक्त अधि यह अधिसूचना जारी की जाने की तारीख में प्रारम्भ होगी।

[संख्या अ.र-31015/5/92 ओ० आर I]

कुलदीप सिंह, अवर सचिव

CORRIGENDUM

New Delhi, the 28th July, 1992

S.O. 2193.—Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas No. S.O. 2846, dated the 10th November, 1990, published in the Gazette of India, Part II, Section 3, Sub-section (ii) at pages 4784 to 4787, issued under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby amends the Schedule appended to the specified in the Schedule appended to that notification;

And whereas it has been brought to the notice of the Central Government that certain errors of printing and other nature have occurred in the publication of the said notification in the Gazette;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the said Act, the Central Government hereby amends the Schedule appended to the said notification as follows:

at page 4784, before the existing schedule the following words shall be inserted, namely:—"Taluka: Patan. District: Banaskantha, State: Gujarat".

at page 4784, in village Vamaiya, in column 4, against survey no. 193, for '84' read '04', against survey no. 202, in column 4, for '10' read '18', in column 2, for survey no. '206' read '286', against survey no. 282, in column 5, for '4' read '44', in column 2, for survey no. '313' appearing after survey no. 316 read '315';

at page 4785, in column 1, the words "Valpurs (Contd.)" shall be omitted, against survey no. 360, in column 5, for '69' read '49', against survey no. 364, in column 4, for '81' read '01', against survey no. 417, in column 4, for '13' read '15', in column 2, for survey no. '925' read '927', against survey no. 888, in column 5, for '65' read '85', in village Aghar, in column 2, for survey no. '300' read '308', against survey no. 306, in column 5, for '50' read '58', in column 2, for survey no. '286' read '266', against survey no. 270, in column 5, for '65' read '56', in column 2, for survey no. '125/9' read '125/5' and for survey no. '260' read '368', against survey no. 1463, in column 4, for '33' read '35', against survey no. 547, in column 5, for '73' read '75', against survey no. 548, in column 5, for '88' read '38';

at page 4786, in village Khalinur, against survey no. 1 and 2, in column 4, for '96' read '82' in column 5, for '83' read '10', in village Odhava, against survey no. 230, in column 4, for '10' read '18', against

survey no. 257, in column 2, for '53' read '83', in column 2, for survey no. '261/9' read '251/9', for survey no. '216' read '316', for survey no. '168' read '160', against survey no. 149, in column 4, for '06' read '08', against survey no. 137, in column 5, for '08' read '05', against survey no. 299, in column 4, for '38' read '36'.

Any person interested in any land in respect of which the above amendment has been issued, may within twenty one days of the issue of this notification, object to the acquisition of the whole or any part of the said land or any right in or over such land in terms of sub-section (1) of section 3 of the said Act.

Explanation.—In respect of the lands, survey numbers and area amended through this notification only, the said period of twenty one days in terms of sub-section (1) of section 3 of the said Act shall start running from the date of issue of this notification.

[No. R-031015/5/92-O.R.I.]

KULDIP SINGH, Under Secy.

शुद्धिपत्र

नई दिल्ली, 28 जुलाई, 1992

क्र० आ० 3194.—केन्द्र सरकार ने पेट्रोलियम और कच्चा पदार्थ (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962 (1962 का 50) की धारा 3 की उपधारा (1) के अधीन जारी और भारत के राजपत्र भाग-2, खण्ड-3, उपखण्ड (ii) पृष्ठ संख्यांक 4789 से 4792 में प्रकाशित भारत सरकार, पेट्रोलियम और प्राकृतिक गैस संवालय की अधिसूचना क्र० आ० 2848, दिनांक 10 नवम्बर, 90 द्वारा इस अधिसूचना से संलग्न भूमि में वर्णित भूमि का अधिग्रहण करने के अपने आशय की सूचना दी थी।

और केन्द्र सरकार की जानकारी में यह बात लाई गई कि राजपत्र में प्रकाशित उपरोक्त अधिसूचना में कुछ गलतियाँ हैं।

अतः अब केन्द्रीय सरकार उक्त अधिनियम की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिसूचना से संलग्न भूमि में निम्नलिखित संशोधन करती है।

पृष्ठ संख्या 4789 पर चित्तोड़ गांव के हेक्टेयर कॉलम में पंक्ति 1 पर "05" के स्थान पर "00" पढ़ें।

पृष्ठ संख्या 4789 पर चित्तोड़ गांव के हेक्टेयर कॉलम में पंक्ति 8 पर "05" के स्थान पर "00" पढ़ें।

पृष्ठ संख्या 4789 पर गांव के नाम के कॉलम में पंक्ति 8 पर "डेहरवा" के स्थान पर "डेहरवा" पढ़ें।

पृष्ठ संख्या 4789 पर डेहरवा गांव के हेक्टेयर कॉलम में पंक्ति 16 पर "03" के स्थान पर "00" पढ़ें।

पृष्ठ संख्या 4789 पर डेहरवा गांव के हेक्टेयर कॉलम में पंक्ति 19 पर "05" के स्थान पर "00" पढ़ें।

पृष्ठ संख्या 4789 पर डेहरवा गांव के एयर कॉलम में पंक्ति 21 पर "30" के स्थान पर "38" पढ़ें।

पृष्ठ संख्या 4789 पर डेहरवा गांव के वर्गमीटर कॉलम में पंक्ति 24 पर "00" के स्थान पर "08" पढ़ें।

पृष्ठ संख्या 4789 पर डेहरवा गांव के एयर कॉलम में पंक्ति 28 पर "03" के स्थान पर "08" पढ़ें।

पृष्ठ संख्या 4789 पर डेहरवा गांव के वर्गमीटर कॉलम में पंक्ति 32 पर "62" के स्थान पर "02" पढ़ें।

पृष्ठ संख्या 4789 पर गांव के नाम के कॉलम में पंक्ति 43 पर संशोधन नम्बर 358/2 के सामने लिखें "सई" को उसी कॉलम में पंक्ति 33 पर संशोधन नम्बर 437 के सामने पढ़ें।

पृष्ठ संख्या 4789 पर सई गांव के वर्गमीटर कॉलम में पंक्ति 41 पर "03" के स्थान पर "04" पढ़ें।

पृष्ठ संख्या 4789 पर सई गांव के एयर और वर्गमीटर कॉलम में पंक्ति 42 पर "53" और "7" के स्थान पर "03" और "78" पढ़ें।

पृष्ठ संख्या 4789 पर सई गांव के एयर कॉलम में पंक्ति 45 पर "14" के स्थान पर "19" पढ़ें।

पृष्ठ संख्या 4789 पर सई गांव के सर्वेक्षण नम्बर कॉलम में पंक्ति 46 पर "334/1" के स्थान पर "364/1" पढ़ें।

पृष्ठ संख्या 4789 पर सई गांव के एयर कॉलम में पंक्ति 53 पर "15" के स्थान पर "10" पढ़ें।

पृष्ठ संख्या 4790 पर गांव के नाम के कॉलम में पंक्ति 12 पर सर्वेक्षण नम्बर 569/2 के सामने लिखें "किडियातगर" को उसी कॉलम में पंक्ति 11 पर सर्वेक्षण नम्बर "571" के सामने पढ़ें।

पृष्ठ संख्या 4790 पर किडिया नगर गांव के सर्वेक्षण नम्बर कॉलम में पंक्ति 45 पर "1228/1" के स्थान पर "1228/2" पढ़ें। उसी कॉलम में पंक्ति 46 पर "1228/2" के स्थान पर "1228/1" पढ़ें।

पृष्ठ संख्या 4790 पर बावलपुर गांव के वर्गमीटर कॉलम में पंक्ति 50 पर "676" के स्थान पर "67.5" पढ़ें।

पृष्ठ संख्या 4790 पर भीमासर गांव के सर्वेक्षण, नम्बर कॉलम में पंक्ति 27 पर "881/2" के स्थान पर "881/2" पढ़ें।

पृष्ठ संख्या 4790 पर भीमासर गांव के एयर कॉलम में पंक्ति 43 पर "20" के स्थान पर "28" पढ़ें।

पृष्ठ संख्या 4791 पर भीमासर गांव के सर्वेक्षण नम्बर कॉलम में पंक्ति 47 पर "2085/5" के स्थान पर "2080/5" पढ़ें।

पृष्ठ संख्या 4791 पर लखागढ़ गांव के सर्वेक्षण नम्बर कॉलम में पंक्ति 32 पर "28/2" के स्थान पर "26/2" पढ़ें।

पृष्ठ संख्या 4791 पर बंधनसर गांव के सर्वेक्षण नम्बर कॉलम में पंक्ति 54 पर "98/2" के स्थान पर "88/2" पढ़ें।

पृष्ठ संख्या 4792 पर बांधनसर गांव के वर्गमीटर में पंक्ति 2 पर "55" के स्थान पर "56" पढ़ें।

ऐसी भूमि में जिसकी बाबत उपरोक्त संशोधन जारी किया गया है, जिसका कोई व्यक्ति इस अधिसूचना के जारी किए जाने के हफ्तेस दिन के भीतर उक्त भूमि के सम्पूर्ण या किसी भाग के या उक्त ऐसी भूमि में या इस पर किसी अधिकार के अर्जित किए जाने के विरुद्ध उक्त अधिनियम की धारा 5 की उपधारा (1) के निबंधनों के अनुसार आप्रोच कर सकेगा।

स्पष्टीकरण:—केवल इस अधिसूचना के द्वारा संशोधित गांव के नाम, जसरा सं० व क्षेत्रफल की बाबत उक्त अधिनियम की धारा 5(1) के निबंधनों के अन्तर्गत हफ्तेस दिन की उक्त अवधि यह अधिसूचना जारी की जाने की तारीख से प्रारम्भ होगी।

[संख्या:अर 31015/5/92-ओ० प्रार-I]

कुलवीर सिंह, अवर सचिव

CORRIGENDUM

New Delhi, the 28th July, 1992

S.O. 2194.—Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas no. S.O. 2848, dated the 10th November, 1990, published in the Gazette of India, Part II, Section 3, Sub-section (ii) at pages 4792 to 4794, issued under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of

Right of User in Land) Act, 1962 (50 of 1962), the Central Government gave notice of its intention to acquire the lands specified in the Schedule appended to that notification;

And whereas it has been brought to the notice of the Central Government that certain errors of printing nature have occurred in the publication of the said notification in the Gazette;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the said Act, the Central Government hereby amends the Schedule appended to the said notification as follows:

at page 4794, in village Lakhagadh, in column 2, in line 47, for survey no. "61/4" read "61/3" and in line 49, for survey no. "61/3" read "61/4".

Any person interested in any land in respect of which the above amendment has been issued, may within twenty one days of the issue of this notification, object to the acquisition of the whole or any part of the said land or any right in or over such land in terms of sub-section (1) of section 5 of the said Act.

Explanation.—In respect of the lands, survey numbers and area amended through this notification only, the said period of twenty-one days in terms of sub-section (1) of section 5 of the said Act shall start running from the date of issue of this notification.

[No. R-31015/5/92-O.R.I.]

KULDIP SINGH, Under Secy.

सचिव

नई दिल्ली, 28 जुलाई, 1992

का. प्रा. 2195.—केन्द्र सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) के अधीन जारी और भारत के राजपत्र भाग-2, खण्ड-3, उपखण्ड (ii) पृष्ठ संख्यांक 4794 से 4797 में प्रकाशित भारत सरकार, पेट्रोलियम और प्राकृतिक गैस संवाहक की अधिसूचना का. प्रा. 2849, दिनांक 10 नवम्बर, 90 द्वारा इस अधिसूचना से संलग्न धनसूची में वर्णित भूमि का अधिग्रहण करने के अपने आशय की सूचना दी थी।

और केन्द्र सरकार की जानकारी में यह बात आई गई कि राजपत्र में प्रकाशित उपरोक्त अधिसूचना में मद्रास की कुछ गलतियाँ हैं।

अतः अब केन्द्रीय सरकार उक्त अधिनियम की धारा 3 की उपधारा (1) द्वारा प्रवृत्त शक्तियों का प्रयोग करते हुए उक्त अधिसूचना से संलग्न धनसूची में निम्नलिखित संशोधन करती है।

पृष्ठ संख्या 4794 पर गांव के नाम के कॉलम में "पोपरासा" के स्थान पर "पीपरासा" पढ़ें। पृष्ठ संख्या 4795 पर गांव के नाम के कॉलम में पंक्ति 14 पर "रोजु गरादडी" के स्थान पर "राजु" पढ़ें।

पृष्ठ संख्या 4795 पर गांव के नाम के कॉलम में पंक्ति 15 के सर्वे नम्बर 440 के सामने " " के स्थान पर "गरादडी" पढ़ें।

पृष्ठ संख्या 4795 पर गांव के नाम के कॉलम में पंक्ति 23 के सर्वे नं. 839 के सामने " " पर "पर" पढ़ें।

पृष्ठ संख्या 4796 पर गांव के नाम के कॉलम में पंक्ति 45 के सर्वे नं. 168 के सामने " " के स्थान पर "दिगमडा" पढ़ें।

पृष्ठ संख्या 4796 पर गांव के नाम के कॉलम में पंक्ति 1 के सर्वे नं. 148 के सामने "परभुन्द" के स्थान पर "दिगमडा" पढ़ें।

पृष्ठ संख्या 4797 पर वाराही गांव के सर्वे नं. के कॉलम में पंक्ति 3 पर "12" के स्थान पर "312" पढ़ें।

पृष्ठ संख्या 4797 पर वाराही गांव के आरंभ कॉलम में पंक्ति 4 पर "1" के स्थान पर "19" पढ़ें।

पृष्ठ संख्या 4797 पर नवाग्राम गांव के वर्गमीटर कॉलम में पंक्ति 18 पर "4" के स्थान पर "45" पढ़ें।

ऐसी भूमि में जिसकी बाबत उपरोक्त संशोधन जारी किया गया है, हितवद्ध कोई व्यक्ति इस अधिसूचना के जारी किए जाने के इक्कीस दिन के भीतर उक्त भूमि के सम्पूर्ण या किसी भाग के या उक्त ऐसी भूमि में या इस पर किसी अधिकार के अर्जित किए जाने के विरुद्ध उक्त अधिनियम की धारा 5 की उपधारा (1) के निबंधनों के अनुसार आक्षेप कर सकेगा।

स्पष्टीकरण.—केवल इस अधिसूचना के द्वारा संशोधित गांव के नाम, जसरा स. व शेषफल की बाबत उक्त अधिनियम की धारा 5(1) के निबंधनों के अनुसार इक्कीस दिन की उक्त अवधि यह अधिसूचना जारी की जाने की तारीख से प्रारम्भ होगी।

[संख्या आर-31015/5/92-ओ.आर.-I]

कुलदीप सिंह, प्रवर सचिव

CORRIGENDUM

New Delhi, the 28th July, 1992

S.O. 2195.—Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas No. S.O. 2849, dated the 10th November, 1990, published in the Gazette of India, Part II, Section 3, Sub-section (ii) at pages 4797 to 4799, issued under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government gave notice of its intention to acquire the lands specified in the Schedule appended to that notification;

And whereas it has been brought to the notice of the Central Government that certain errors of printing nature have occurred in the publication of the said notification in the Gazette.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the said Act, the Central Government hereby amends the Schedule appended to the said notification as follows :

at page 4798, in column 1, for the name of village "antalpur" read "Santalpur"; in village Santalpur, in column 2, for survey no. "682" read "782", and for "689" read "789";

at page 4799, in village Lakhapura, against survey no. 147, in column 3, for '00' read '01' against survey no. 412, in village Varahi, in column 3, for '05' read '00'.

Any person interested in any land in respect of which the above amendment has been issued, may within twenty one days of the issue of this notification, object to the acquisition of the whole or any part of the said land or any right in or over such land in terms of sub-section (1) of section 5 of the said Act.

Explanation.—In respect of the lands, survey nos. and area amended through this notification only, the said period of twenty one days in terms of sub-section (1) of section 5 of the said Act starts running from the date of issue of this notification.

[No. R-31015/5/92-OR-I]

KULDIP SINGH, Under Secy.

मुद्रित

नई दिल्ली, 28 जुलाई, 1992

का.घा. 2195.—केन्द्र सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) के अधीन जारी और भारत के राजपत्र भाग-2, खण्ड-3, उपखण्ड (iii) पृष्ठ संख्याक-4799 से 4800 के अंकित पाठ्य सरकार पेट्रोलियम और प्राकृतिक गैस संवाहक की

अधिसूचना का.घा. 2850, दिनांक 10 नवम्बर, 90 द्वारा इस अधिसूचना में संलग्न अनुसूची में वर्णित भूमि का अधिग्रहण करने के अपने आशय की सूचना दी थी।

और केन्द्र सरकार की जानकारी में यह बात साई गई कि राजपत्र में प्रकाशित उपरोक्त अधिसूचना में सुधार की कुछ गलतियां हैं।

अतः अब केन्द्रीय सरकार उक्त अधिनियम की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिसूचना से संलग्न अनुसूची में निम्नलिखित संशोधन करती है —

पृष्ठ संख्या 4799 पर गांव के नाम के कॉलम में "दुनावडा" के स्थान पर "दुतावाडा" पढ़ें।

पृष्ठ संख्या 4800 पर दुतावाडा गांव के वर्गमीटर कॉलम में पंक्ति 20 पर "07" के स्थान पर "67" पढ़ें।

पृष्ठ संख्या 4800 पर माया गांव के सर्वे नं. कॉलम में पंक्ति 43 पर "272" के स्थान पर "2/2" पढ़ें।

पृष्ठ संख्या 4800 पर रोडा गांव के सर्वे नं. कॉलम में पंक्ति 34 पर "442" के स्थान पर "412" पढ़ें।

ऐसी भूमि में जिसकी बाबत उपरोक्त संशोधन जारी किया गया है हितवद्ध कोई व्यक्ति इस अधिसूचना के जारी किए जाने के इक्कीस दिन के भीतर उक्त भूमि के सम्पूर्ण या किसी भाग के या उक्त ऐसी भूमि में या इस पर किसी अधिकार के अर्जित किए जाने के विरुद्ध उक्त अधिनियम की धारा 5 की उपधारा (1) के निबंधनों के अनुसार आक्षेप कर सकेगा।

स्पष्टीकरण.—केवल इस अधिसूचना के द्वारा संशोधित गांव के नाम, जसरा स. व शेषफल की बाबत उक्त अधिनियम की धारा 5(1) के निबंधनों के अनुसार इक्कीस दिन की उक्त अवधि यह अधिसूचना जारी की जाने की तारीख से प्रारम्भ होगी।

[संख्या आर-31015/5/92-ओ.आर.-I]

कुलदीप सिंह, प्रवर सचिव

CORRIGENDUM

New Delhi, the 28th July, 1992

S.O. 2195.—Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas no. S.O. 2850, dated the 10th November, 1990, published in the Gazette of India, Part II, Section 3, Sub-section (ii) at pages 4800 to 4801, issued under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government gave notice of its intention to acquire the lands specified in the Schedule appended to that notification;

And whereas it has been brought to the notice of the Central Government that certain errors of printing nature have occurred in the publication of the said notification in the Gazette;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the said Act, the Central Government hereby amends the Schedule appended to the said notification as follows :

at page 4801, in the schedule for "Harija" read "Harij"; in village Dunavada, against survey no. 112 in column 3, for "2" read "0", in village Masa, against survey no. 120, in column 4, for "26" read "36", in line 22, for survey no. '3' read '33'; for survey no. "769" read "759".

Any person interested in any land in respect of which the above amendment has been issued, may within twenty one days of the issue of this notification, object to the acquisition of the whole or any part of the said land or any right in

or over such land in terms of sub-section (1) of section 5 of the said Act.

Explanation.—In respect of the lands, survey nos. and area amended through this notification only, the said period of twenty one days in terms of sub-section (1) of section 5 of the said Act starts running from the date of issue of this notification.

[No. R-31015/5/92-O.R.I.]

KULDIP SINGH, Under Secy.

शुद्धि पत्र

नई दिल्ली, 28 जुलाई, 1992

का.प्र. 2197.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पादप-लाहन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) के अधीन जारी और भारत के राजपत्र भाग 2, खण्ड-3, उपखण्ड (ii) पृष्ठ संख्याक 4802 से 4803 में प्रकाशित भारत सरकार, पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना का.प्र. 2851, दिनांक 10 नवम्बर, 90 द्वारा इस अधिसूचना में सलन अनुसूची में वर्णित भूमि का अधि-ग्रहण करने के अपने आशय की सूचना दी थी।

और केन्द्र सरकार की जानकारी में यह बात लाई गई कि राजपत्र में प्रकाशित उपरोक्त अधिसूचना में मुद्रण में कुछ गलतियाँ हैं।

अतः अब केन्द्रीय सरकार उक्त अधिनियम की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करने हुए उक्त अधिसूचना में सलन अनुसूची में निम्नलिखित संशोधन करती है —

पृष्ठ संख्या 4803 पर देवली गांव के हैक्टेयर कागम में पंक्ति 2 पर "06" के स्थान पर "00" पढ़ें।

पृष्ठ संख्या 4803 पर दखली गांव के सर्वे नं. कागम में पंक्ति 24 पर "543/6" के स्थान पर "543/3/9" पढ़ें।

पृष्ठ संख्या 4803 पर देवली गांव के सर्वे नं. कागम में पंक्ति 28 पर "543/10" के स्थान पर "543/3/10" पढ़ें।

पृष्ठ संख्या 4803 पर चावणसर गांव के सर्वे नं. कागम में पंक्ति 35 पर "90" के स्थान पर "98" पढ़ें।

पृष्ठ संख्या 4803 पर चावणसर गांव के सर्वे नं. कागम में पंक्ति 38 पर "5" के स्थान पर "55" पढ़ें।

पृष्ठ संख्या 4803 पर चावणसर गांव के सर्वे नं. कागम में पंक्ति 39 पर "5" के स्थान पर "50" पढ़ें।

पृष्ठ संख्या 4803 पर चावणसर गांव के सर्वे नं. कागम में पंक्ति 40 पर "6" के स्थान पर "64" पढ़ें।

पृष्ठ संख्या 4803 पर गांव के नाम के कागम में पंक्ति 1 पर "होसोध (जारी)" के स्थान पर "होसोध (जारी)" पढ़ें।

ऐसी भूमि में जिनका बाबल उपरोक्त संशोधन जारी किया गया है, जिसके कोई व्यक्ति इस अधिसूचना के जारी किए जाने के इक्कीस दिन के भीतर उक्त भूमि के संपूर्ण या किसी भाग के या उक्त ऐसी भूमि में या इस पर किसी अधिकार के अर्जन किए जाने के विरुद्ध उक्त अधिनियम की धारा 5 की उपधारा (1) के निबंधों के अनुसार आपेक्ष कर सकेगा।

स्पष्टीकरण—देखत इस अधिसूचना के द्वारा संशोधित गांव के नाम खसप में व अंतर्गत की बाबत उक्त अधिनियम की धारा 5(1) के

निबंधों के अनुसार इक्कीस दिन की उक्त अवधि यह अधिसूचना जारी की जाने की तारीख से प्रारम्भ होगी।

[संख्या आर-31015/5/92-आ.आर-1]

कुलदीप सिंह, अवर सचिव

CORRIGENDUM

New Delhi, the 28th July, 1992

S.O. 2197.—Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas No. S.O. 2851, dated the 10th November, 1990, published in the Gazette of India, Part II, Section 3, Sub section (ii) at pages 4803 to 4805, issued under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government gave notice of its intention to acquire the lands specified in the Schedule appended to that notification;

And whereas it has been brought to the notice of the Central Government that certain errors of printing nature have occurred in the publication of the said notification of the Gazette;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the said Act, the Central Government hereby amends the Schedule appended to the said notification as follows:

at page 4804, in village Dethah, against survey no. 498, in column 4, for "15" read "13".

Any person interested in any land in respect of which the above amendment has been issued, may within twenty one days of the issue of this notification, object to the acquisition of the whole or any part of the said land or any right in or over such land in terms of sub-section (1) of section 5 of the said Act.

Explanation.—In respect of the lands, survey nos. and area amended through this notification only, the said period of twenty one days in terms of sub-section (1) of section 5 of the said Act starts running from the date of issue of this notification.

[No. R-31015/5/92-O.R.I.]

KULDIP SINGH, Under Secy.

शुद्धि पत्र

नई दिल्ली, 28 जुलाई, 1992

का.प्र. 2198.—केन्द्र सरकार ने पेट्रोलियम और खनिज पादप-लाहन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962 (1962 का 50) की धारा 3 की उपधारा (1) के अधीन जारी और भारत के राजपत्र भाग 2, खण्ड 3, उपखण्ड (ii) पृष्ठ संख्याक 8 से 9 में प्रकाशित भारत सरकार, पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना का.प्र. 33, दिनांक 4 जनवरी, 1992 द्वारा इस अधिसूचना में सलन अनुसूची में वर्णित भूमि का अधिग्रहण करने के अपने आशय की सूचना दी थी।

और केन्द्र सरकार की जानकारी में यह बात लाई गई कि राजपत्र में प्रकाशित उपरोक्त अधिसूचना में मुद्रण की कुछ गलतियाँ हैं।

अतः अब केन्द्रीय सरकार उक्त अधिनियम की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करने हुए उक्त अधिसूचना में सलन अनुसूची में निम्नलिखित संशोधन करती है।

पृष्ठ संख्या 8 के पंक्ति नंबर 1 पर गांव का नाम 'प्रयाग बनने' पढ़ें।

पृष्ठ संख्या 8 सर्वेक्षण संख्या 1265 के आगे हेक्टर कॉलम में '09' के स्थान पर '00' पढ़ें।

ऐसी भूमि में जिसकी बाबत उपरोक्त सशोधन जारी किया गया है, हिनबद्ध कोई व्यक्ति इस अधिसूचना के जारी किए जाने के हक्कीस दिन के भीतर उक्त भूमि के सम्पूर्ण या किसी भाग के या उक्त ऐसी भूमि में या इस पर किसी अधिकार के अर्जित किए जाने के विरुद्ध उक्त अधिनियम की धारा 5 की उपधारा (1) के निबंधनों के अनुसार आक्षेप कर सकेगा।

स्पष्टीकरण : केवल इस अधिसूचना के द्वारा सशोधित गांव के नाम, खसरा नं. व क्षेत्रफल की बाबत उक्त अधिनियम की धारा 5(1) के निबंधनों के अनुसार हक्कीस दिन की उक्त अवधि यह अधिसूचना जारी की जाने की तारीख से प्रारम्भ होगी।

[संख्या धार-31015/7/92-ओ. धार.-1]

कुलदीप सिंह, भ्रष्ट सचिव

CORRIGENDUM

New Delhi, the 28th July, 1992

S.O.2198.—Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas No. S.O. 33, dated the 4th January, 1992, published in the Gazette of India, Part II, Section 3, Sub-section (ii) at page 10, issued under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), (hereinafter referred to as the said Act), the Central Government gave notice of its intention to acquire the lands specified in the Schedule appended to that notification;

And whereas it has been brought to the notice of the Central Government that certain errors of printing nature have occurred in the publication of the said notification in the Official Gazette;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the said Act, the Central Government hereby amends the Schedule appended to the said notification as follows :

at page 10, in paragraph 3, for the words, brackets and figures "Act (50 of 1962)" read "Act, 1962 (50 of 1962)".

[No. R-31015/7/92-O.R.I.]

KULDIP SINGH, Under Secy.

शुद्धिपत्र

नई दिल्ली, 28 जुलाई, 1992

का.पा. 2199.—केन्द्र सरकार ने पेट्रोलियम और खनिज पाइप-लाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) के अधीन जारी और भारत के राजपत्र भाग 2, खण्ड 3, उपखण्ड (ii) पृष्ठ संख्यांक 247 में प्रकाशित भारत सरकार, पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना का का.पा. 137, दिनांक 11 जनवरी, 1992 द्वारा उस अधिसूचना से संलग्न अनुसूची में वर्णित भूमि का अधिग्रहण करने के अपने आशय की सूचना दी थी।

और केन्द्र सरकार की जानकारी में यह बात आई गई कि राजपत्र में प्रकाशित उपरोक्त अधिसूचना में भ्रष्टण की कुछ गलतियाँ हैं।

अतः अब केन्द्रीय सरकार उक्त अधिनियम की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्ति का प्रयोग करते हुए उक्त अधिसूचना से संलग्न में निम्नलिखित सशोधन कर देती है।

पृष्ठ संख्या 247 के बाहिरे भाग में कॉलम (1) में 'पंजाबा (क्रमशः)' के स्थान पर 'पंजाणा (क्रमशः)' पढ़ें।

ऐसी भूमि में जिसकी बाबत उपरोक्त सशोधन जारी किया गया है, हिनबद्ध कोई व्यक्ति इस अधिसूचना के जारी किए जाने के हक्कीस दिन के भीतर उक्त भूमि के सम्पूर्ण या किसी भाग के या उक्त ऐसी भूमि में या इस पर किसी अधिकार के अर्जित किए जाने के विरुद्ध उक्त अधिनियम की धारा 6 की उपधारा (1) के निबंधनों के अनुसार आक्षेप कर सकेगा।

स्पष्टीकरण :—केवल इस अधिसूचना के द्वारा सशोधित गांव के नाम, खसरा नं. व क्षेत्रफल की बाबत उक्त अधिनियम की धारा 5(1) के निबंधनों के अनुसार हक्कीस दिन की उक्त अवधि यह अधिसूचना जारी की जाने की तारीख से प्रारम्भ होगी।

[संख्या धार-31015/7/92-ओ. धार.-1]

कुलदीप सिंह, भ्रष्ट सचिव

CORRIGENDUM

New Delhi, the 28th July, 1992

S.O. 2199.—Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas No. S.O. 137, dated the 11th January, 1992, published in the Gazette of India, Part II, Section 3, Sub-section (ii), at pages 247 to 248, issued under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), (hereinafter referred to as the said Act,) the Central Government gave notice of its intention to acquire the lands specified in the Schedule appended to that notification ;

And whereas it has been brought to the notice of the Central Government that certain errors of printing nature have occurred in the publication of the said notification in the Official Gazette ;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the said Act, the Central Government hereby amends the Schedule appended to the said notification as follows :

at page 247, in the schedule, in Column 1, for "Mithi Mohar" read "Mithi Rohar".

Any person interested in any land in respect of which the above amendment has been issued, may within twenty one days of the issue of this notification, object to the acquisition of the whole or any part of the said land or any right in or over such land in terms of sub-section (1) of section 5 of the said Act.

Explanation.—In respect of the lands, survey nos. and area amended through this notification only, the said period of twenty one days in terms of sub-section (1) of section 5 of the said Act starts running from the date the copies of this notification are made available to the public after its publication in the official Gazette.

[No. R-31015/7/92-O.R.I.]

KULDIP SINGH, Under Secy.

शुद्धिपत्र

नई दिल्ली, 28 जुलाई, 1992

का.पा. 2300.—केन्द्र सरकार ने पेट्रोलियम और खनिज पाइप-लाइन (भूमि में उपयोग के अधिकार का अर्जन), अधिनियम 1962, (1962 का 50) की धारा 3 की उपधारा (1) के अधीन जारी और भारत के राजपत्र भाग-2, खण्ड-3, उपखण्ड (ii) पृष्ठ संख्यांक 3508 से 3510 में प्रकाशित भारत सरकार, पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना का का.पा. 2303 दिनांक 28 अगस्त, 1991 द्वारा इस अधिसूचना से संलग्न अनुसूची में वर्णित भूमि का अधिग्रहण करने के अपने आशय की सूचना दी थी,

और केन्द्र सरकार की जानकारी में यह बात लाई गई कि राजपत्र में प्रकाशित उपरोक्त अधिसूचना में मुद्रण की कुछ गलतियाँ हैं।

अतः अब केन्द्रीय सरकार उक्त अधिनियम की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिसूचना में संलग्न अनुसूची में निम्नलिखित संशोधन करती है।

पृष्ठ संख्या 3508 पर तहसील के नाम के कॉलम में लिखे "मां गानरी" के स्थान पर "सांगानेर" पढ़ें।

पृष्ठ संख्या 3510 पर राप्ती बन्ना गांव के खसरा में कॉलम में "1030" के स्थान पर "1040" पढ़ें।

ऐसी भूमि में जिसकी बाबत उपर्युक्त संशोधन जारी किया गया है, हितबद्ध कोई व्यक्ति इस अधिसूचना के जारी किए जाने के हफ्तीस दिन के भीतर के सम्पूर्ण या किसी भाग के या उक्त ऐसी भूमि में या इस पर किसी अधिकार के अर्जित किए जाने के विरुद्ध उक्त अधिनियम की धारा 5 की उपधारा (1) के निबंधनों के अनुसार आपील कर सकेगा।

स्पष्टीकरण:—केबल इस अधिसूचना के द्वारा संशोधन गांव के नाम, खसरा नं. व क्षेत्रफल की बाबत उक्त अधिनियम की धारा 5(1) के निबंधनों के अनुसार हफ्तीस दिन की उक्त अवधि इस अधिसूचना के जारी किये जाने की तारीख से प्रारम्भ होगी।

[नं. आर-31015/3/91-अं. आर आई (भाग-1)]

कुलदीप सिंह, अवर सचिव

मुद्रित

नई दिल्ली, 28 जुलाई, 1992

का.आ. 2201:—केन्द्र सरकार ने पेट्रोलियम और खान पदार्थ-साइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) के अधीन जारी और भारत के राजपत्र भाग-2, खण्ड-3, उपखण्ड (ii) पृष्ठ संख्या 4787 से 4788 में प्रकाशित भारत सरकार, पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना का.आ. 2847, दिनांक: 10 नवम्बर, 90 द्वारा इस अधिसूचना से संलग्न अनुसूची में वर्णित भूमि का अधिग्रहण करने के अपने प्रायश की सूचना दी थी।

और केन्द्र सरकार की जानकारी में यह बात लाई गई कि राजपत्र में प्रकाशित उपरोक्त अधिसूचना में मुद्रण की कुछ गलतियाँ हैं।

अतः अब केन्द्रीय सरकार उक्त अधिनियम की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिसूचना से संलग्न अनुसूची में निम्नलिखित संशोधन करती है।

पृष्ठ संख्या 4787 पर तालुका के सामने लिखें "राज्य. बनसका-माथ" के स्थान पर "जिला: बनसकांठा" पढ़ें।

पृष्ठ संख्या 4787 पर तालुका के सामने लिखें "कंकराज" के स्थान पर "कांकराज" पढ़ें।

पृष्ठ संख्या 4787 पर गांव के नाम के कॉलम में पंक्ति 1 पर "मोहन-परा" के स्थान पर "सोहनपुरा" पढ़ें।

पृष्ठ संख्या 4788 पर मानपुरा गांव के वर्गमीटर कॉलम में पंक्ति 7 पर "85" के स्थान पर "84" पढ़ें।

ऐसी भूमि में जिसकी बाबत उपरोक्त संशोधन जारी किया गया है, हितबद्ध कोई व्यक्ति इस अधिसूचना के जारी किए जाने के हफ्तीस दिन के भीतर उक्त भूमि के सम्पूर्ण या किसी भाग के या उक्त ऐसी भूमि में या इस पर किसी अधिकार के अर्जित किए जाने के विरुद्ध उक्त

अधिनियम का धारा 5 का उपधारा (1) के निबंधनों के अनुसार आपील कर सकेगा।

स्पष्टीकरण:—केबल इस अधिसूचना के द्वारा संशोधित गांव के नाम, खसरा संख्या व क्षेत्रफल की बाबत उक्त अधिनियम की धारा 5 (1) के निबंधनों के अनुसार हफ्तीस दिन की उक्त अवधि यह अधिसूचना जारी की जाने की तारीख से प्रारम्भ होगी।

[संख्या आर-31015//792-बी आर आई]

कुलदीप सिंह, अवर सचिव

श्रम मंत्रालय

नई दिल्ली, 17 जुलाई 1992

का.आ. 2202:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ बिकानेर एंड जयपुर के प्रबन्धन के संबंध में निविद औद्योगिक विवाद और उनके कर्म-कारों के बीच, अनुबंध में निविद औद्योगिक विवाद में औद्योगिक अधि-करण, जयपुर के पंचवट का प्रकाशित करती है, जो केन्द्रीय सरकार की 16-7-92 की प्राप्त हुआ था।

[संख्या एल-12012/135/86-डी-II (ए)]

मुद्राय चन्द्र शर्मा, डैस्क अधिकारी

MINISTRY OF LABOUR

New Delhi, the 17th July, 1992

S.O. 2202. —In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of Bikaner and Jaipur and their workmen, which was received by the Central Government on the 16-7-92.

[No. L-12012/135/86 D.J.I(A)]

S. C. SHARMA, Desk Officer

अनुबन्ध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी.आई.टी. 9/87

निकरतः भारत सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश नं. 12012/135/86-डी-II (ए) दिनांक 19-1-1987 श्री हाकिम अली मार्फत राजस्थान बैंक ईस्टाब्लिशमेंट एक्टिव परवाना भवन माधो बाग, मोधपुर।

—प्रार्थी

बनाम

स्टेट बैंक ऑफ बिकानेर एंड जयपुर, बैंक ऑफिंग, जिलाक मार्ग, जयपुर।

—प्रत्यर्थी

उपस्थित

माननीय प्रयासावीश श्री जयन्ती जी, आर. एच. जे. एम

प्रार्थी की ओर से :

प्रत्यर्थी की ओर से :

दिनांक प्रकाश

श्री जयन्ती लाल शाह

श्री एस. के. जैन

4 जून, 1992

प्रश्न

भारत सरकार, अधि सञ्चालन, नई दिल्ली न निम्न विवाद इस अधिनियम की तहत अधिनियम अधिनियम विवाद अधिनियम 1947 की धारा 10 (1) (घ) के अन्तर्गत प्रेषित किया है।

“क्या स्टेट बैंक ऑफ़ बंगाल, पश्चिम बंगाल जयपुर के प्रबंधक द्वारा कनवेंट एजेंट और हाकिम अली की सेवाएं 12-1-81 में समाप्त करने का फैसला किया गया है। यदि नहीं तो यह कर्मकार किस अनुबंध का हकदार है।”

2 राजस्थान बैंक एंग्लो-इंडियन, माधो बाग, जोधपुर, जिसे कनवेंट एजेंटों में संघ संयोजित किया है, ने जलिये कथन प्रकट किया कि अधिनी बैंक की रायपुर शाखा में हाकिम अली, आसक को नियुक्ति 9-11-78 की कनवेंट एजेंट की सेवा में की थी जिस बाबत हाकिम अली तथा माधो बाग शाखा के प्रबंधक के बीच प्रदर्शन एग्रीमेंट हुआ था। उन एग्रीमेंट के अनुसार अधिनी हाकिम अली ने 1,000 रुपये मंथरी बिक्रीपिटी, बैंक में जमा कराई थी और घर घर जाकर ग्राहकों से दायी इकट्ठा करके बैंक में जमा कराया था जिस बाबत बैंक उसे कमीशन के रूप में करीब 900 रुपये प्रति माह देता था। संघ का यह भी कहना है कि एग्रीमेंट प्रदर्शन-1 के अनुसार हाकिम अली बैंक के कनवेंट एजेंट नियुक्ति में रहना था और नियुक्ति की शर्तों में 11 मार्च 1980 तक यह बैंक में जाकर लेजें में भी उन अधिनी का इन्टरव्यू करना था जो वह ग्राहकों से इकट्ठा करके लाता था परन्तु 12-3-80 को बैंक ने प्रदर्शन-2 पत्र लिखकर उनसे बतौर कर्मकार कार्य कराना बंद कर दिया और तत्पश्चात् 12 जनवरी, 1981 को प्रदर्शन-3 पत्र द्वारा ग्राहकों के नये खाते खोलना भी बंद करवा दिया। अधिनी संघ का कहना है इस पर हाकिम अली ने एक पत्र दिनांक 23-6-80 को प्रदर्शन-4 प्रबंधक माधो बाग शाखा को लिखा कि 2-7-81 में सभी खाते बंद हो जायेंगे और वह उस राशि से बचत हो जायेगा जो उसे बतौर कमीशन मिलती थी। इस पर 24-6-81 की प्रबंधक राजस्थान शाखा ने प्रदर्शन-4 पत्र मुख्यालय को पठा दिया। 30-7-81 को हाकिम अली ने पुनः प्रबंधक राजस्थान को प्रदर्शन-5 पत्र लिखा फिर भी 12-1-81 को हाकिम अली की सेवाएं समाप्त कर दी गई। अधिनी संघ का कहना है कि 12-1-81 को समाप्त हुए एक कनवेंट वर्ष में हाकिम अली ने 240 दिवस की सेवा पूरी कर ली थी किन्तु भी धारा 25-एफ के प्रावधानों का लाभ उसे नहीं दिया गया अधिनी न तो एक माह का नोटिस दिया न ही नोटिस के एवज में एक माह का वेतन यहां तक कि छंटनी पता भी नहीं दिया गया। अधिनी संघ के अनुसार हाकिम अली को 12-1-81 से सेवा मुक्ति धारा 25-एफ के प्रावधानों के विपरीत होने से ग्राहकों की अनुचित, धैर्य एवं श्रम हो जाते हैं इसलिए हाकिम अली का सेवा में मानते हुए 12-1-81 से उनके सेवा को निरन्तरता कायम रखते हुए उसे समस्त लाभ दिलाये जाये।

3 अधिनी बैंक ने जलिये अनुत्तर प्राथमिक प्राप्तिधारा को कि हाकिम अली डिपॉजिट क्लैकडर या और कमीशन एजेंट के रूप में नियुक्त था। उनका कार्य ग्राहकों के घर-घर जाकर उनसे बचत खाते खोलवाना था और ग्राहकों का बचत इकट्ठा करके उनको गम बुक में प्रविष्टि करना तथा बैंक में जमा करना था जिस बाबत उसे कमीशन मिलता था और इन प्रकार हाकिम अली और बैंक के बीच नोकर व मालिक के संबंध नहीं थे और न ही औद्योगिक विवाद अधिनियम की धारा 2 (ए) के अन्तर्गत हाकिम अली कर्मकार की परिभाषा में आता है। इसलिए यह निर्णय ही विधि विवाद होने से अपास्त करने योग्य है। नियोजक के अनुसार बैंक द्वारा उनी डिपॉजिट स्कैम जतना में बचत को आश्चर्य करने की दृष्टि से लागू का गई थी। उस नैतिक को प्रति हेतु ही व्यवसाय निधि स्कैम बैंक द्वारा लागू की गई थी जिसके अन्तर्गत हाकिम अली को पब्लिक-कम-कैपिटल रिपरिजेंटेटिव नियुक्त किया गया था और कनवेंट एग्रीमेंट प्रदर्शन-1 पक्षकारों में हुआ जिसके अनुसार ही हाकिम अली ने 1,000/- रुपये बिक्रीपिटी बैंक में जमा

कराई। व्यवसाय निधि प्रकाउट खोलवाने हेतु हाकिम अली घर-घर जात था और ग्राहकों को समझा बुझा कर उनसे प्रकाउट खोलवाना था और ग्राहकों की बचत की राशि उनी बिन बैंक में जमा करता था। नियोजक का यह भी कहना है कि एग्रीमेंट प्रदर्शन-1 के अनुसार हाकिम अली जिस बिन ग्राहकों से बचत की राशि इकट्ठा करता था, उनी बिन बैंक में जमा नहीं करता था बल्कि कुछ दिन बाद जमा करता था। ग्राहकों से रोजाना भी बचत के पैसे इकट्ठा नहीं करता था और इस प्रकार अपनी कार्य सुचारु रूप से प्रदर्शन-1 के मुताबिक नहीं करता था। अधिनी का यह भी कहना है कि हाकिम अली बैंक के कनवेंट एग्रीमेंट में नहीं था, उसके काम करने के निश्चित घंटे नहीं थे न ही इस काम के लिए कोई न्यूनतम मंथिक योग्यता निर्धारित थी यहां तक कि आयु व स्वास्थ्य परीक्षा का भी कोई मापदण्ड निर्धारित नहीं था। उसके कार्य पर बैंक का किसी प्रकार का कोई नियंत्रण नहीं था। बैंक की शाखा में बैठकर ही उसे काम करना नहीं पड़ता था न ही उसकी हाजिरी लगती थी और न ही उसे किसी प्रकार का निश्चित वेतन मिलता था। नियोजक स्वीकार करते हैं कि शाखा प्रबंधक ने उसे कहा था कि बैंक की किमायों या लेजें में कार्य करने का उसे कोई अधिकार नहीं है। यह भी कहते हैं कि बैंक द्वारा हाकिम अली की सेवा समाप्त का प्रश्न ही नहीं उठता क्योंकि वह बैंक का कर्मकार ही नहीं था और औद्योगिक विवाद अधिनियम 1947 के प्रावधान लागू नहीं होते। इसलिए धारा 25-एफ की पालन करने का प्रश्न ही नहीं उठता और हाकिम अली किसी अनुबंध का अधिकारी नहीं है।

4 अपने कथन के समर्थन में हाकिम अली ने स्वयं का शपथ पत्र पेश कर सत्यापित कराया जिससे अधिनी के प्रतिनिधि निजिह की। प्रलेखक साक्ष्य में प्रदर्शन-1 लगभग 5 कोटी प्रतियां पेश की हैं। इसके विपरीत नियोजक की तरफ से श्री आर. टी. कुण्डल ने शपथ पत्र पेश किया है जिससे सच के प्रतिनिधि निजिह की हैं। प्रलेखक साक्ष्य में प्रदर्शन एम-1 कमायस एम-7 कोटी प्रतियां पेश हुई हैं। तत्पश्चात् सेने पत्रावली का निरक्षण किया और पक्षकारों के प्रतिनिधियों की विस्तारपूर्वक सुना।

5 पक्षकारों में एक मात्र विवाद यही है कि हाकिम अली तथा अधिनी बैंक के बीच मालिक व नोकर के संबंध है या नहीं और क्या हाकिम अली औद्योगिक विवाद अधिनियम 1947 की धारा 2 (ए) के अन्तर्गत कर्मकार की परिभाषा में आता है। अपने शपथ पत्र में हाकिम अली कहता है उसकी नियुक्ति बैंक की रायपुर शाखा में 9-11-78 को कनवेंट एजेंट के पद पर हुई थी। उसने अधिनी बैंक में 1,000/- रुपये बिक्रीपिटी के जमा कराये थे। उनका कार्य मुख्य संयोजक रहा है। हाकिम अली कहता है उसका मुख्य कार्य बैंक में जमा राशि में वृद्धि करने के उद्देश्य से लोगों से घर-घर जाकर बैंक में अपनी खाता खोलवाने की प्रोत्साहित करना व उनकी बचत व अन्य खाते खोलने हेतु आवश्यक कार्रवाई अधिनी बैंक के अधिकारियों की देखरेख में व उनके मार्गदर्शन में पूरी करने का था। उसके द्वारा खोलवाये गये खातों के ग्राहकों से माहवारी अधिनी समय समय पर रकम प्राप्त कर उसे रोजाना बैंक में उनके खातों में जमा कराया था हाकिम अली कहता है यह उनके द्वारा खोले हुए खातों के ग्राहकों के खातों में तथा अधिनी बैंक की खाता बरौदाइ बही में रकम जमा करता था व अन्य कनवेंट कार्य करता था और अधिनी बैंक उसके द्वारा खोलवाये गये खातों में जमा की गई रकम पर कमीशन के रूप में वेतन भुगतान करता था, इस पर उसे लगभग 900 रुपये प्रति माह वेतन के रूप में मिलता था। हाकिम अली कहता है उसने अधिनी बैंक में सेवा शुरू की परपक्ष लिखाया था और उन गणों के अनुसार ही समस्त कार्य करना पड़ता है। हाकिम अली कहता है वह जिस लोगों के खाते बैंक में खोलवाता था वे मुझे बैंक का कर्मचारी मानकर ही मुझे खातों में जमा करने हेतु रकम देते थे बैंक खाते खोलवाते थे। हाकिम अली यह भी कहता है कि उसे 12-3-80 की प्रदर्शन उक्त-2 पत्र द्वारा कर बैंक में कनवेंट कार्य नहीं करने के आदेश दिये थे। प्रति परीक्षा में भी हाकिम अली कहता

है उसे बैंक में कितने हाजिरी रजिस्टर में हस्ताक्षर नहीं करने होता था। अपने जब कभी काम बंद किया तो बैंक की सुविधा किया था। इन विषय का एक पत्र डब्ल्यू-8 है वह भा कहता है कि प्रबंध का शर्तों के अनुसार प्रत्येक दिन बटुन किये हुए ऐसे वह घण्टे दिन बैंक में जमा करना या भरायीं प्रतिनिधि के इस सुझाव को अधिक ने प्रस्ताव किया कि "ऐसा नहीं था कि जब तक मेरा तबियत थी मैंने कलैक्शन का कार्य किया और जब इच्छा नहीं हुई तो रद्द ही यह कार्य करना छोड़ दिया।" हाकिम भली से विस्तारपूर्वक प्रति परीक्षा की गई है और उसने प्रति परीक्षा में पूछे गये प्रत्येक प्रश्न का उत्तर सीधा व समाधानकारी दिया है। किसी भी प्रश्न के उत्तर की टालने का प्रयास नहीं किया है और यह प्रति परीक्षा की कसौटी पर खरा उतरा है। हाकिम भली ने क्लेम के अनुसार ही अपने शपथ पत्र में भी दर्ज किया है कि नियुक्ति तिथि से 11-3-80 तक उसने लगातार बिपली बैंक में बैठकर उनके लेजर में वह ग्राहकों की बचत खाता पुस्तकों में उस राशि का इंट्राज किया है जो वह घर-घर जाकर ग्राहकों से वसूल करके लाता था। 12-3-80 को डब्ल्यू-2 पत्र द्वारा बैंक ने उक्त कार्य करने से मना किया है परंतु फिर भी न तो क्लेम के प्रत्युत्तर में उक्त तथ्य का भरायीं द्वारा संशोधन किया गया और न ही हाकिम भली से इस विषय में विशेष प्रति परीक्षा की गई। यहाँ तक कि बैंक के साक्षी श्री दुग्गल ने भी अपने शपथ पत्र में यह दर्ज नहीं किया कि 11-3-80 तक हाकिम भली से बैंक ने बचत खाता पुस्तकों में या लेजर में कोई इंट्राज नहीं करवाया हो। श्री दुग्गल अपने शपथ पत्र की खण्ड सं. 6 में 12-3-80 का पत्र जारी करना स्वीकार करते हैं और कहते हैं कि इनके द्वारा साक्षा प्रबंधक राबतसर ने हाकिम भली को सूचित किया था कि वह बैंक की किताबों व खातों में कोई कार्य नहीं करे जिससे यही निष्कर्ष निकलता है कि 12-3-80 तक हाकिम भली बैंक की राबतसर साक्षा से बैंक की किताबों व खातों में उस राशि का इंट्राज करता था जो वह घर-घर जाकर कलैक्शन कर लाता था।

6. भरायीं बैंक को तरफ से श्री आर. डी. दुग्गल का शपथ पत्र पेश किया गया है जो यह स्वीकार करते हैं कि उसने कभी भी राबतसर साक्षा में काम नहीं किया और उसे व्यक्तिगत जानकारी नहीं है तथा रिहार्ड के आधार पर ही अपने शपथ पत्र दिया है। प्रति परीक्षा में श्री दुग्गल स्वीकार करता है कि खाता खोलवाना तथा बिपोजित लाना भी बैंक का ही काम है, ग्राम पञ्चक से ऐसे जमा करना भी बैंक का ही विजनेस है। हाकिम भली टाईपो डिपोजिट क्लर्क का काम करता था, उसने खाते खोलवाये थे, वह पास्तबुक में कस्टमर के नामने इंट्राज करके लाता था जिस पर बैंक के अधिकारी वस्तुस्थल करने थे। बैंक में या 10.00 ए.ए. से 2.00 पी.एम. तक जमा करा सकता था। श्री दुग्गल प्रति परीक्षा में स्वीकार करता है कि भराय हाकिम भली किसी कस्टमर से ऐसे ले जाता और पास्तबुक में भी इंट्राज कर लाता और ऐसे बैंक में जमा नहीं करता था बैंक उसके बिनाफ कार्यवाही कर सकता था। बैंक के साक्षी की उपरोक्त स्वीकारावृत्ति से यही निष्कर्ष निकलता है कि बाहे बैंक में बैठकर अधिक काम नहीं करता हो, बाहे हाजरी रजिस्टर में उसकी हाजिरी नहीं लगती हो तथा बाहे उसे कोई निविदा देना नहीं दिया हो परंतु धमियेख पर उपलब्ध साक्ष्य से यह निष्कर्ष निकलता है कि हाकिम भली बैंक के नियंत्रण में था और बैंक का ही कार्य करता था इसलिए वह बैंक का कर्मचारी था।

7. बैंक की तरफ से भ्रमकसर्ष "ए" भ्रमकसर्ष "बी" प्रस्तुत हुए हैं। भ्रमकसर्ष ए में कलैक्शन एजेंट की इष्टीज दर्ज और भ्रमकसर्ष बी में उसका रीमर्केशन तथा पैन्टी। इन दोनों प्रलेखों से भी मेरी उपरोक्त धारणा की हो पुष्टि होती है कि हाकिम भली पूर्ण रूपेण बैंक के नियंत्रण में कार्य करना था और बैंक की हिरायतों के अनुसार ही उसे कार्य करना पड़ता था तथा बूक होने पर वह स्वरूप उसका कमीशन काटा जा सकता था।

8. श्री जैन, बैंक प्रतिनिधि ने कुछ न्याय दृष्टांतों का भी उल्लेख किया है। भागवत कोसरी बनाम बर्कमैन 1962 (11) एल. एल. जे. 2020 GI/92—3

(एन. सी.) 356 पर उपलब्ध उच्चतम न्यायालय के न्याय दृष्टांत का उल्लेख किया है जिसमें खान में कार्य करने हेतु श्रमिकों का नियुक्ति सिरदार किया करते थे जिनका सुपरवोजन भी श्रमिकों पर रहता था और जितना कार्य सिरदारों द्वारा नियुक्त मजदूर सिरदार की चौकसी में करते थे उसके अनुसार ही सिरदारों का उनका हाना किये गये काम के लिए कमीशन मित्रता था। उन विचारों के विषय तथा आर-विस्थितियों के संदर्भ में तथ्यात्मक निष्कर्ष यह निकला था कि भागवत कोसरी प्रबंधकों का सिरदारों द्वारा नियुक्त व्यक्ति पर कोई नियंत्रण या प्रतिबंध नहीं है और उस विवेक परिस्थितियों में सिरदारों द्वारा नियुक्त व्यक्ति धारा 2(ए) के अंतर्गत कर्मकार की परिभाषा में नहीं पाये गये। श्री जैन का तरफ से मे एड बेकर इडिया लि. बनाम बर्कमैन 1961 (2) एल. एल. जे. 94 के उच्चतम न्यायालय के न्याय दृष्टांत का भी उल्लेख किया गया है जिसके भी तथ्य विवेचनाधीन विवाद तथ्यों से एकदम भिन्न थे। भारतीय उच्चतम न्यायालय ने निम्न मत व्यक्त किया:

"If the nature of the duties is manual or clerical then the person must be held to be a workman. On the other hand, if the manual or clerical work is only a small part of the duty and incidental to his main work which is not manual or clerical, then such a person would not be a workman. It has, therefore, to be seen in each case from the nature of the duty whether a person employed is workman or not. Where the duties of a person employed by a pharmaceutical concern as a representative, for canvassing orders consisted mainly of canvassing and any clerical or manual work that he had to do was incidental to his main work of canvassing and could not take more than a small fraction of the time for which he had to work, he would not fall within the definition of 'workman' in S. (2) of the Act."

उपरोक्त विवाद में मंडल कलैक्शन डिप्रेजेटिव का मुख्य कार्य कन्वेंसिंग करने का था, बाहे बहुत कलैक्शन व सेंट्रल गाँव जाते जगहों से वो कन्वेंसिंग का इस डेटल था और इन लिए मंडल कलैक्शन डिप्रेजेटिव का कर्मकार नहीं माना।

9. श्री जैन द्वारा क्लिनिंग आदम इंडिया बनाम इन्वर्न क्लेमिंग विवाद 1963 (1) एल. एल. जे. 120 पर उपलब्ध उच्चतम न्यायालय के न्याय दृष्टांत का भी महान लया गया है जिसके भी विवेचनाधीन विवाद के तथ्यों से एकदम भिन्न थे। यहां पर तो पुलिस विभाग ने निवाजक को चौकदार को भेजाए रखान क दुई था, तथाकथित चौकदार पुलिस के नियंत्रण में कार्यरत रहा था जिसे वेला भी पुलिस विभाग ही निवाजक से प्राप्त काने पदान काता था। इन्हें उक्त चौकदार को क्लिनिंग आदम इंडिया का हाँवाग स्वकार नहीं किया गये, क्योंकि दोनों में मालिक व मजदूर के संबंध नहीं थे। श्री जैन नियोजक प्रतिनिधि की तरफ से टा. पी. आर. का बनाम मेन्सल टाईको कम्पनी, ए. आई. आर. 1991 (एम. रा.) 279 के न्याय दृष्टांत का भी सहारा लिया गया है जिसमें टाईको कम्पनी के सेक्शन मेन्सल का विवाद था जो कलैक्शन मुख्य कलैक्शन कलैक्शन में कार्यरत थे और धनकी जियाँ के लिए एक बैंक के क्लिनिंग नियुक्त होता था जिसके धनकी धनकी लोकन मेन्सल उले थे। बैंक मेन्सल का कार्य नियोजक द्वारा तैयार का गई मारिटों का विक बटान हेतु कन्वेंसिंग का ही कार्य करता था जिस बाबत सेक्शन मेन्सल को क्लिनिंग और एडवर्टीजमेंट प्रावि करने होते थे जिनका प्रति हनु पास्टव होडिंगस मिनेमा स्टाइडस आदि का कार्य करवाना जाता था और उपरोक्त परिस्थितियों में न्यायालय ने मेन्सल मेन्सल का कर्मकार थापन नहीं किया और भारतीय उच्चतम न्यायालय ने निम्न मत व्यक्त किया:

"It is seen from the facts found that the appellant was employed to do canvassing and promoting sales for the company. The duties involve the suggesting of ways and means to improve the sales, a study of the type or status of the public to whom the product has to reach and a study of the market condition. He was also required to suggest about the publicity in markets and melas, advertisements including the need for posters holders and cinema

These duties do require the imaginative and creative minds which could not be termed as either mechanical, unskilled or clerical in nature. The supervising work of the other local salesman was part of his work as incidental to his main work for canvassing and promotion in the area of his operation. Such a person cannot be termed as workman....."

10 उद्धारक व्याप दृष्टान्तों के विपरीत श्रमिक प्रतिनिधि ने मद्रास उच्च न्यायालय को खण्ड पेट का व्याप दृष्टान्त मैनेजमेंट आफ इंडियन बैंक बनाम पट्टाबेन अधिकारी इंडस्ट्रियल ट्रिब्यूनल 1990 (1) एल. एन. जे. 50, 2 उल्लेख व्याप दृष्टान्त का सहारा लिया गया है जिसमें उद्धार और रिस्त्रिक्टिवा निवेचनाधन विवाद के तथ्यों और परिस्थितियों में एकदम मिलने जुलने थे। वहाँ पर भी टाईनी डिपोजिट एजेंट की नियुक्ति का गई थी जैसा कार्य निवेचनाधन विवाद के श्री हाकिम अली के अनुसार हो ग्राहकों के घर पर जाकर उको बचत खाता खोलना तथा प्रत्येक माह यात्रकों द्वारा बचत को गई राशि उनके खातों में जमा करना था। माननाय उच्च न्यायालय के मतानुसार.

"Deposit mobilisation is one of the chief functions of a bank. As part of deposit mobilisation, the Tiny Deposit Scheme has been initiated by the bank. Under the rules framed by the bank with regard to the scheme, opening of the account will have to be done only in the presence of authorised official of the bank, though the collecting agent is permitted to receive deposits from door to door. It is the bank official who enroll customers even if there is a recommendation by the collecting agent with regard to any particular customer. The T.D.A. is undoubtedly engaged in the business of bank, namely deposit mobilisation. Though the remuneration of the T.D.A. is called commission in the agreement and in the appointment letter, it is remuneration as held by the Supreme Court in State of Assam Vs. Kanak Chandra Dutta (1968—1-LLJ-228) as well as the definition of the wages in the Act. The commission is a payment for hire or reward within the meaning of S. 2(s) of the I.D. Act. Nature of work of T.D.A. demands daily attendance in the bank and deposit of collections made on the previous day. Such T.D.A. is obliged to inform the bank in advance if the agent is not in a position to make the collection himself and whenever he appoints a delegate, this has to be done only with the prior permission of the bank and the T.D.A. is responsible for the conduct of such delegate. T.D.A. has to do some clerical work like filling of relevant forms, ledgers, pass books etc. Bank has got the power to instruct the agent not to enroll new subscribers at any time. The power to terminate the agency by the agent or giving a month's notice shows that it is a contract of service. The agent is taken to task when any depositor closes account within a period of two years from the commencement thereof. All the above facts will go to prove that there is sufficient control over the work of the agent by the bank and that the agent is not an independent contractor, but part of the organisation. The facts that no qualifications are prescribed for the post, that what is paid is only a commission, that agent can make alternate arrangement for doing the work, that there is no fixed norms for any amount collected that no time specifies as to when the agent should go to the bank or how long he could stay there, that the agent does not sign the attendance register and does not write any accounts, that the bank has power to transfer the agent have no significance whatsoever in view of the decisions of the Supreme Court. All the circumstances prove that Tiny Deposit Agent is a workman as defined in Section 2(S) of the I.D. Act.

मद्रास उच्च न्यायालय के उपरोक्त व्याप दृष्टान्त के अनुसार निवेचनाधन विवाद के प्राचीन हाकिम अली को मौखिक और उसके द्वारा किए गए कार्यों में यह श्रमिक भी धारा 2 (एस) के अन्तर्गत "कर्मकार" की परिभाषा में आता है।

निर्णायक साक्ष्य और धार. श्री. दुग्गल ने प्रा. परीक्षा में स्वीकार किया है कि यह पास बुक में कस्टमर के सामने खड़ा करने का काम था, पास बुक पर बैंक के अधिकारियों के हस्ताक्षर करते थे बैंक में बैंक 10 ए. एम. से 2 पी. एम. तक जमा करना सकता था। अगर वह किसी कस्टमर से पैसे ले आता और पास बुक में भी एंज कर लाता लेकिन पैसे जमा नहीं करता तो बैंक उसके खिलाफ कार्रवाई कर सकता था। श्री दुग्गल ने यह भी कहा है कि प्रदर्श 4 व 5 पत्र हमारे बैंक द्वारा जारी हुए हैं। बैंक ने डिपोजिट बढ़ाने के लिए एक स्कीम निकाली थी। खाता खोलना तथा डिपोजिट लेना भी बैंक का काम है। धारम पब्लिक से पैसे जमा कराना भी बैंक का विजय है। हाकिम अली टाईनी डिपोजिट एजेंट का काम करता था और वह ने खुलवाने हेतु जर्मता में जाता था। उसने खाते खुलवाए थे जिसबाबत उसे 20 प्रतिशत कमीशन दिया जाता था। प्रदर्श एस-2 एपीमेंट के अनुसार हाकिम अली ने बतौर निवर्तमान के 1000 रुपए बैंक में जमा कराए थे जिसमें भी हाकिम अली के कर्तव्यों का उल्लेख है और वृत्ति करने पर दण्ड स्वरूप उसका कमीशन काटा जा सकता था इसबाबत का भी उल्लेख है। एजेंसी समाप्त करने की भी शर्त हममें दर्ज है। अर्न्ततः "ए" व "बी" से भी कनैक्टिग एजेंट के कर्तव्य वायव तथा वृत्ति व लापरवाही करने पर दण्ड स्वरूप पैन्टी का भी उल्लेख मिलता है जिन सब से मद्रास उच्च न्यायालय के उपरोक्त व्याप दृष्टान्त के अनुसार हाकिम अली भी धारा 2 (एस) के अन्तर्गत कर्मकार की परिभाषा में आ जाता है। यह भी उल्लेखनीय है कि 9-11-78 से 12-3-80 तक हाकिम अली ने बैंक की राबतसर शाखा में जाकर उनके किताबों व लेजर बुक में भी उस सब राशि व खाताधारियों की प्रविष्टियों को भी जो उसने बतौर टाईनी डिपोजिट कलैक्टर घर घर जाकर लोगों से सम्पर्क कर खाते खोलवाए थे और जिनसे बचत राशि वसूल कर बैंक में जमा कराई थी। उन तथ्यों की हाकिम अली ने क्लेम के अनुसार ही अपने शपथ पत्र में भी दर्ज किया है जिसकी पुष्टि बैंक द्वारा जारी पत्र एस-3 से भी होती है। उपरोक्त मौखिक व प्रलेखि साध्य के विपरीत बैंक की तरफ से न तो क्लेम के प्रत्युत्तर में यह कहा गया है कि हाकिम अली ने कभी भी बैंक की किताबों या बही खातों में कोई प्रविष्टि नहीं की हो और न ही हाकिम अली ने इस विषय में प्रति परीक्षा की गई है यहां तक कि निर्णायक साक्ष्य श्री दुग्गल ने भी अपने शपथ पत्र में उक्त तथ्यों का प्रतिबाव नहीं किया है बल्कि श्री दुग्गल ने अपने शपथ पत्र की बरण में 6 में यह स्वीकार किया है कि बैंक की रखरखाव शाखा के प्रबंधक ने 12-3-80 को हाकिम अली को एक पत्र दिया था कि वह बैंक की किताबों व खातों में कोई कार्य न करे। धार: यह भी सिद्ध है कि हाकिम अली ने 8-11-78 से 12-3-80 तक बैंक के खातों व किताबों में राबतसर शाखा के प्रबंधक प्रविष्टियाँ की हैं। आपत्तियों और विधि के उपरोक्त समस्त कारणों से प्राचीन की यह प्राथमिक धारणा आधारहीन न मानते हुए खारिज की जाती है और हाकिम अली को आई. सी. एक्ट, 1947 के अन्तर्गत (धारा 2 एस) "कर्मकार" घोषित किया जाता है।

12. प्राचीन संघ ने क्लेम में ही यह दर्ज किया है कि हाकिम अली ने 9-11-78 से 12-5-80 तक बैंक की राबतसर शाखा में बतौर टाईनी डिपोजिट स्कीम एजेंट का कार्य किया है और 12 जनवरी 1981 को समाप्त हुए एक कलैन्डर वर्ष में उसने 240 दिवस से अधिक की सेवा पूरी कर ली थी फिर भी उसे धारा 25 एक के प्रावधानों का लाभ नहीं दिया गया। अतः य. ने क्लेम के प्रत्युत्तर द्वारा उक्त तथ्यों का अस्वीकार नहीं किया है बल्कि प्राथमिक धारणा ही दर्ज की है कि पक्षकारों में मासिक भण्डारों के संबंध नहीं है और हाकिम अली का कार्य की परिभाषा में नहीं आता है। क्लेम के अनुसार ही हाकिम अली ने अपने शपथ पत्र में भी दर्ज किया है कि उसने 12-1-81 को समाप्त हुए एक कलैन्डर वर्ष में 240 दिवस से अधिक सेवा पूरी कर ली थी और उसे धारा 25 एक के प्रावधानों का लाभ नहीं दिया अर्थात् छंटनी करने समय न तो एक माह का नोटिस, न नोटिस के एवज में एक माह का वेतन अथवा छंटनी का मुआवजा भी नहीं दिया गया। उक्त तथ्यों बाबत हाकिम अली से मांग मांग की भी प्रति परीक्षा नहीं की गई है यहां तक कि निर्णायक साक्ष्य श्री दुग्गल ने भी अपने शपथ पत्र में उक्त तथ्यों का प्रतिबाव नहीं किया है।

है। स्कोरड रूप में अप्रार्थी ने धारा 35-एफ की पालना नहीं की है और इसलिए श्रमिक का सेवा नुक़्त से धारा 25-एफ के प्रावधानों के विपरीत होने से स्व. हो अनुचित, अवैध एवं शून्य हो जाता है और श्रमिक हाकिम अली टाईना डिपोजिट एजेंट के रूप में नियोजित होने का अधिकारी हो गया है। उसकी सेवा का निरंतरता वायम रखा जाता है। हाकिम अली की सेवा नुक़्त 12-1-81 को की गई था जबकि उसने समझौता अधिकारी के मामले विवाद मन् 1986 में खड़ा किया था। इन परिस्थितियों में यह श्रमिक 12-1-81 से 21-12-85 तक की अवधि का वेतन प्राप्त करने का अधिकारी नहीं है और इन दिवस का अधि-नियम निम्न प्रकार किया जाता है

"श्रमिक हाकिम अली, टाईना डिपोजिट एजेंट की 12-1-81 से की गई छटना न्यायोचित नहीं है और इसे उक्त पत्र पर नियोजित घोषित किया जाता है। उसकी सेवा का निरंतरता वायम रखा जाता है। 12-1-81 से 21-12-85 तक का अधि का उसे वेतन नहीं दिलाया जाता है। नियोक्ता को आदेश है कि हम अधिनियम के प्रकाशन के अक्षर तीन माह हाकिम अली को उसके पद पर नियोजित कर उसके average commission on fix करते हुए उसे सजा पिछला बकाया वर्ग शन भी नियम के अनुसार अदा करेंगे अथवा 12 प्रतिशत मासिक दर से ब्याज मा देना पड़ेगा। 100-रुपए खर्चा मुक़्त्या भी दिलाया जाता है।"

13 अर्वाइ के प्रति वास्ते प्रकाशित मान्य सरकार को धारा 17(1) अधिनियम के पठार्थ आए

जगन सिंह, पीठासीन अधिकारी

नई दिल्ली, 17 जुलाई 1992

का भा 101 -- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक आफ बीकानेर एण्ड जयपुर के प्रबन्धन के सम्बन्ध नियोजकों और उनके कर्म-कारों के बीच, अनुसूच में निम्नित औद्योगिक विवाद में औद्योगिक अधि-करण, जयपुर के पक्षों को प्रकाशित करती है, जो केन्द्रीय सरकार का 16-7-92 को प्राप्त हुआ था।

[संख्या एल-12012/48/85-डी-II (ए)]

सुभाष चन्द शर्मा, डेप्ट अधिकारी

New Delhi, the 17th July, 1992

S.O. 2203—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of Bikaner and Jaipur and their workmen, which was received by the Central Government on the 16-7-1992

[No L-12012/48/85-D. II (A)]

S C. SHARMA, Desk Officer

अनुसूच

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं सी आई टी 10/86

रैफरेंस भारत सरकार, श्रम मन्त्रालय, नई दिल्ली का आदेश संख्या एल-12012/48/85-डी-II (ए) दिनांक 19-2-1986

श्री ओ पी शर्मा मार्फत राजस्थान बैंक एम्प्लॉई यूनियन जयपुर।

--प्रार्थी

बताम

प्रबन्धक, राजस्थान स्टेट बैंक ऑफ बीकानेर एंड जयपुर, जयपुर।

, -प्रार्थी

उपस्थित

माननीय न्यायाधीश श्री अमृतमिहजी, धारा एच जे एस

प्रार्थी की ओर से

श्री जे एल शाह

प्रार्थी की ओर से

श्री बी एल माथुर

दिनांक अर्वाइ

20 अर्वाइ, 1992

अर्वाइ

भारत सरकार, श्रम मन्त्रालय, नई दिल्ली ने अर्वाइ उपरोक्त आदेश द्वारा निम्न विवाद इस न्यायाधिकरण को वास्ते अधिनियम औद्योगिक विवाद अधिनियम 1947 की धारा 10 (1) (बी) के अन्तर्गत प्रेषित किया है

"क्या स्टेट बैंक आफ बीकानेर एंड जयपुर, जयपुर के परम्पन्न की श्री ओ पी शर्मा, कर्मों की सेवाओं को जुलाई 1971 में समाप्त करते और नए शर्तों का निर्धारण करने समय उसे और रोजगार प्रदान करने हेतु उनके नाम पर विचार न करने की कार्य-वाही न्यायोचित है। यदि नहीं तो परम्पन्न शर्तों का अन्तर्गत का हकदार है।"

2 राजस्थान बैंक एम्प्लॉई यूनियन - जयपुर, जिसे तत्पश्चात् प्रार्थी संघ सम्बोधित किया है, ने अर्वाइ केन प्रकट किया कि उनका संघ मास्यता प्राप्त है जिसमें राजस्थान के विभिन्न बैंकों में कार्य करने वाले कर्मचारी सदस्य हैं। अप्रार्थी बैंक में कार्य करने वाले कर्मचारी भी प्रार्थी संघ के सदस्य हैं। श्री ओ पी शर्मा प्रार्थी श्रमिक भी प्रार्थी संघ का सदस्य है। प्रार्थी संघ का यह भी कहना है कि अर्वाइ ओ पी शर्मा का प्रथम नियुक्ति फरवरी 1969 में विपक्षी बैंक को दोषा शाखा में हुई थी जिसने वहाँ पर अगस्त 1971 तक कार्य किया है। परन्तु बीकानेर में बैंक के अधिकारियों ने अर्वाइ को दोषा में अर्वाइ बैंक विपक्षी है, ऐसा श्रमिक को नियमित होने से बचन करने को दृष्टि से व अर्वाइ श्रम कानूनों के सामने से बचन करने की दृष्टि में किया गया है। श्रमिक की सेवाएँ 12-8-71 से यह कहकर समाप्त कर दी गई कि उसके काम की आवश्यकता नहीं है। प्रार्थी का यह भी कहना है कि ओम प्रकाश शर्मा को सेवा मुक्त करने के बाद विपक्षी बैंक की दोषा शाखा में मन् 1972 में सर्वश्री मतीश नागर व प्रदुता वीणा की नियुक्ति की गई थी और उक्त नियुक्ति करने में पहले ओम प्रकाश शर्मा को नियुक्ति की सूचना नहीं दी गई। उक्त दोनो कर्मचारियों को नियुक्ति भी जानकारी श्री शर्मा को मिली तो उनसे बैंक के अधिकारियों से मिलकर नियुक्ति की मांग की। जिस बाबत पढ़ने तो अधिकारी श्रमिक को आश्वासन देते रहे और बाद में उक्त दोनो कर्मचारियों को भी मन् 1974 में सेवा मुक्त कर दिया। प्रार्थी संघ यह भी कहता है कि 18-8-84 को विपक्षी बैंक ने उक्त दोनो कर्मचारियों को नियमित नियुक्ति दे दी जो अभी भी कार्य कर रहे हैं और इस प्रकार अप्रार्थी नियोक्ता ने धारा 25-जी और 25-एफ के प्रावधानों को उल्लंघन किया है। इसलिए ओम प्रकाश शर्मा को 16-8-84 से सेवा में बहाल करते हुए नियमित कर समस्त सुविधाओं का लाभ प्रदान किया जावे और पूरा वेतन दिलाया जावे।

3 अप्रार्थी बैंक ने अर्वाइ प्रस्तुत केस के कथनों को अस्वीकार करते हुए प्रार्थीमक आपत्तियों की है कि केस पर प्रार्थी संघ के सहायक सचिव श्री ओ पी शर्मा के हस्ताक्षर हैं जो प्रार्थी श्रमिक से भिन्न व्यक्ति

है तथा ओ क्लेम पर हस्तक्षेप करने के लिए अधिकृत नहीं है। प्रार्थी संघ का मास्यता प्राप्त होना भी स्वीकार किया है परन्तु ओम प्रकाश प्रार्थी संघ का सदस्य नहीं है इसलिए इन शर्तों का विवाद प्रार्थी संघ उठाने के लिए अधिकृत नहीं है। प्रार्थी का यह भी कथन है कि श्रमिक ओम प्रकाश शर्मा ने 12 माह में 240 दिवस सेवा पूरी नहीं की है और इसकी सेवा मुक्ति सन् 1971 में की गई थी जिसके 15 वर्ष बाद विवाद खड़ा किया गया है जो भी अस्पष्टिक वेरी से करने के कारण काल बर्तित है शर्मा को खारिज करने योग्य है। इस विषय में प्रार्थी यह भी कहते हैं कि संभवतः श्रमिक अन्य किसी लाभप्रद नियोजन में था इसलिए 15 वर्ष उपरांत विवाद खड़ा किया है। नियोजक के अनुसार मास्यता 25-एफ, 2-बी व 25-एन के प्रावधान लागू नहीं होते हैं और धारा 2 (11) (बीबी) के प्रावधान भी रिटोरो-विक्टिव इन्फैक्टर से लागू होने से शर्मा को लाभ का अधिकारी नहीं होता। नियोजक का कहना है कि श्रमिक की नियुक्ति अस्थायी तौर पर नियुक्त श्रमिक के लिए की गई थी निष्पक्ष उल्लेख नियुक्ति आदेश में ही किया गया था जिसे श्रमिक ने स्वेच्छा से स्वीकार किया था इसलिए भी यह श्रमिक अब विमुख कथन नहीं कर सकता और एप्लोपल का सिद्धान्त लागू होता है। नियोजक यह स्वीकार करता है कि समीक्षा माग की नियुक्ति दोमा शाखा में दिवम्बर 1973 में अस्थायी रूप में की गई थी और श्री प्रतापद मोणा की नियुक्ति भी मार्च 1974 में अस्थायी रूप में की गई थी। उक्त दोनों व्यक्तियों ने 270 दिवस की सेवा अवधि पूरी कर ली थी इसलिए प्रपत्र सं. पी.ई.आर/115/83 दिनांक 10-1-83 के अनुसार उक्त दोनों व्यक्तियों का आवश्यक प्रतिया प्रदानाने के उपरांत नियुक्ति दी गई थी। श्रमिक ओम प्रकाश शर्मा ने 270 दिवस की सेवा पूरी नहीं की थी इसलिए उसे उक्त प्रपत्र का लाभ नहीं दिया गया। नियोजक के अनुसार वर्ष 1978 में संघ के साथ उसका एक सम्झौता हुआ था जिसकी अनुपालना में ही उन व्यक्तियों को नियुक्ति निश्चित दी गई है जो या तो उक्त सरकार के अनुसार 270 दिवस की सेवा पूरी कर चुके थे अथवा 240 दिवस की सेवा अवधि पूरी कर चुके थे इसलिए संघ अब उक्त समझौते के विपरीत यह नहीं कह सकता कि 240 या 270 दिवस से कम सेवा अवधि वालों को भी नियुक्ति नियुक्ति दी गयी। इस प्रकार नियोजक के अनुसार प्रार्थी संघ का कथन खतरे योग्य नहीं है और श्रमिक ओम प्रकाश शर्मा किसी अनुतोष का अधिकारी नहीं है।

4. अपने कथनों के समर्थन में श्रमिक ओम प्रकाश शर्मा ने स्वयं का शपथ पत्र पेश कर सत्यापित कराया जिसमें नियोजक के प्रतिनिधि ने जिरह की है। प्राथमिक माध्यम में डब्ल्यू-1 लगायत डब्ल्यू-8 फोटो प्रतियां पेश की गई हैं। इनके विपरीत नियोजक की तरफ से सर्वोच्च सेज प्रकाश शर्मा, अजीत सिंह यादव तथा के.सी. चंद सुधार ने शपथ पत्र पेश किये हैं जिसे संघ के प्रतिनिधि ने जिरह की है। प्राथमिक माध्यम में भी कुछ फोटो प्रतियां पेश की गई हैं। तत्परवात् मैंने पत्रकारों के प्रतिनिधियों को विस्वास्तपूर्वक मुना और पत्रागामी का निरीक्षण किया।

5. जहां तक प्रारंभिक आपत्तियों का प्रश्न है, श्री ओम प्रकाश शर्मा ने कहा है कि यहाँ स्थान बैंक एम्प्लोईज यूनियन का सदस्य है, फरवरी 1969 में था। वह है। उसने 1969 से 1974 तक 50 पैसे प्रति माह बंदा दिया। उसके बाद से जब तक 1/रुपये प्रति माह बंदा देता रहा है। श्री नरसाला जो खण्डेवाल हमारी यूनियन के अध्यक्ष थे और श्री महेन्द्र शिन्हा सचिव हैं। उपरोक्त माध्यम के विपरीत नियोजक के किसी भी साक्ष्य ने यह नहीं कहा है कि श्रमिक ओम प्रकाश शर्मा प्रार्थी संघ का सदस्य नहीं हो गया उसने बंदा नहीं दिया हो। यह भी उल्लेखनीय है कि औद्योगिक विवाद अधिनियम 1947 की धारा 2-ए का संशोधन होने के उपरांत सेवा मुक्ति से संबंधित श्रमिक स्वयं भी उठाते हैं कि औद्योगिक है। अतः उपरोक्त समस्त कारणों से प्रार्थी संघ का बंदा उठाई गई प्रारंभिक आपत्तियां निराधार मानते हुए अभास्त की जाती हैं।

6. जहां तक विवाद के काल बर्तित होने का प्रश्न है, स्वीकृत रूप में श्रमिक की सेवा मुक्ति जुलाई 1971 में की गई थी और यह रिकॉर्ड 19-2-86 को की गई है जो निम्न तौर पर विवरित तो है परन्तु औद्योगिक विवाद अधिनियम 1947 में ऐसी कोई समय सीमा निर्धारित नहीं है जिसके अनुसार ही विवाद उठाया जा सके। इंडियन लिमिटेड एक्ट 1963 का आर्टिकल 137 औद्योगिक विवाद अधिनियम लागू नहीं होते हैं इसलिए 15 वर्ष उपरांत उठाया गया यह विवाद भी काल बर्तित करार नहीं दिया जा सकता। यहां पर यह भी उल्लेखनीय है कि श्रमिक ने एक कैलेंडर वर्ष में 240 दिवस की सेवा अवधि पूरी नहीं की थी इसलिए धारा 25-एफ के अंतर्गत निर्देश नहीं हुआ है बल्कि धारा 25-एच के अंतर्गत विवाद उठाया गया है क्योंकि श्रमिक की सेवा मुक्ति के उपरांत सन् 1973 में समीक्षा माग की व 1974 में प्रस्ताव सीमा को भी श्रमिक की तरह अस्थायी रूप में नियुक्ति किया गया था। क्लेम की धरण सं. 5 में भी वर्णित है कि उक्त दोनों व्यक्तियों को नियुक्ति की सूचना मिलने पर यह श्रमिक बैंक के अधिकारियों से मिला जो उसे आश्वासन देने रहे और अंततोगत्वा 1974 में उन दोनों व्यक्तियों को भी सेवा मुक्ति कर दिया गया। मेरी राय में श्रमिक से प्रार्थी संघ से यह अपेक्षा थी कि वे सन् 1974 के उपरांत शीघ्रतया समझौता अधिकारी के समक्ष विवाद खड़ा करते। परन्तु उपरोक्त विमुख मात्र से उठाया गया विवाद काल बर्तित करार नहीं दिया जा सकता। इस विषय में मेडनी पिगनाईट कारपोरेशन बनाम मुन्नायुयम 1984 लैब, आई. सी. 1880 पर उल्लेख मात्र उच्च न्यायालय के न्याय वृष्टांत का उल्लेख किया जा सकता है जहां पर चार वर्ष 6 माह उपरांत विवाद उठाया गया था और मात्र उच्च न्यायालय ने माननीय उच्चतम न्यायालय के न्याय वृष्टांत एवम सविसेज प्राइवेट लि. बनाम इंडियन ट्रिब्यूनल परीवाबाय 1979 लैब आई. सी. 1, के न्याय वृष्टांत पर निर्भर करते हुए यह मत व्यक्त किया है कि समझौता अधिकारी के तहत विवाद से विवाद उठाने मात्र से यह नहीं कहा जा सकता कि रिकॉर्ड अनुचित है। अतः उपरोक्त समस्त कारणों से यह प्राथमिक आपत्ति भी निराधार मानते हुए अभास्त की जाती है।

7. गुणावगुण पर क्लेम के अनुसार ओम प्रकाश शर्मा ने अपने शपथ पत्र में भी कहा है कि उसने फरवरी 1969 से अगस्त 1971 तक बिजली बैंक की दोमा शाखा में पीओन के पद पर कार्य किया है परन्तु बैंक के अधिकारियों ने उसकी सेवाओं को बीच बीच में जबरन ब्रेक दे देते थे और कुछ दिन बाद वापस सेवा में रख लेते थे तथा अंततोगत्वा 12-8-71 को यह कहकर सेवा मुक्ति कर दिया कि उसके काम की आवश्यकता नहीं है। न तो क्लेम में और ही ओम प्रकाश ने अपने शपथ पत्र में यह कहा है कि उसने 240 दिवस की सेवा एक कैलेंडर वर्ष में पूरी की है। नियोजक साक्षी तैज प्रकाश शर्मा भी कहते हैं कि श्रमिक ने कुल 96 दिवस तक ही कार्य किया है। इन परिस्थितियों में धारा 25-एफ के प्रावधान लागू नहीं हैं।

8. जहां तक धारा 25-एच के प्रावधान लागू करने का प्रश्न है गुजरान उच्च न्यायालय ने गुजरान स्टेट मशीन टूल्स कारपोरेशन बनाम शोपक देसाई 1987 लैब आई. सी. 1361 के न्याय वृष्टांत में यह स्पष्ट व्यवस्था की है कि चाहे किसी श्रमिक ने एक कैलेंडर वर्ष में 240 दिवस की सेवा पूरी नहीं की हो और चाहे धारा 25-एफ के प्रावधान लागू नहीं होते हों, धारा 25-एच के प्रावधान लागू हो आयेगे। उक्त न्याय वृष्टांत में श्री शोपक देसाई ने 12-1-83 से 11-4-83 तक सेवा की थी और उसने भी 240 दिवस सेवा अवधि पूरी नहीं की थी परन्तु उसका सेवा मुक्ति के उपरांत बड़ी कार्य करने के लिए नई नियुक्ति की गई और शोपक देसाई को सूचित नहीं किया इसलिए उसे धारा 25-एच के प्रावधानों का लाभ दिया गया। इस विषय में राजस्थान उच्च न्यायालय का एकलपीठ के न्याय वृष्टांत एस. बी. सिबिल रिट निटाना नं. 722/81 बेज प्रकाश गुप्ता बनाम एस. बी. बी. जे. निर्णय 10-1-81 का भी उल्लेख किया जा सकता है जिसकी फोटो प्रति संघ के प्रतिनिधि ने पेश की है और जिसके अनुसार भी 240 दिवस की

सेवा अवधि पूरी नहीं करने पर भी धारा 25-एच के प्रावधान लागू किए गए थे। राजस्थान उच्च न्यायालय की खण्ड पीठ ने रामचन्द्र यादव बनाम प्रार. एच. प्रार. टी. सी., 1989 (1) प्रार. एच. प्रार. 636 के न्याय वृष्ठांत में भी धारा 25-एच को मैजिस्ट्री करार दिया था क्योंकि अधिकों की सेवा मुक्ति करने के बाद वही कार्य करने के लिए नई नियुक्तियों की गई थी और पूर्व में सेवा मुक्त अधिकों को उसका सूचना नहीं दी गई। अतः उपरोक्त समस्त कारणों से धारा 25-एच लागू नहीं होने पर भी धारा 25-एच को लागू किया जा सकता है तथा नियोजक प्रतिनिधि की यह आपत्ति भी निराधार मानते हुए खारिज की जाती है।

9. नियोजक प्रतिनिधि की एक आपत्ति यह भी थी कि अधिक की नियुक्ति भावेश में ही यह वर्ष कर दिया गया था कि उसे एक निश्चित अवधि के लिए अस्थाई रूप में नियुक्ति दी जा रही है, उक्त अवधि समाप्त होते ही उसकी सेवाएं स्वतः ही समाप्त हो जाएंगी। उक्त सेवा शर्तें अधिक ने स्वेच्छा से स्वीकार कर ली थी इसलिए वह अब वह इसके विपरीत कथन करने के लिए एस्टाब्लिश है तथा औद्योगिक विवाद अधिनियम 1947 की धारा 2 (००) में (बी बी) का संशोधन 18-4-84 से लागू हो गया था जिसे भी रिटोस्टैब्लिश इफैक्ट से लागू किया गया है और इसलिए यह अधिक किसी अनुवीक्षक अधिकारी नहीं है। अपने कथनों के समर्थन में नियोजक प्रतिनिधि ने 24-2-71, 10-4-71 तथा 2-8-71 से नियुक्ति भावेश की फोटो प्रतियां देना की हैं। मैंने उक्त नियुक्ति भावेशों का भलीभांति अध्ययन किया परन्तु मेरी राय में नियुक्ति भावेश में ही उक्त सेवा शर्तें वर्ण कर देने मात्र से अधिक को धारा 25-एच के लाभ से वंचित नहीं किया जा सकता और न ही धारा 2 (००) (बी बी) के संशोधन को 18-8-84 के पूर्व ही रिटोस्टैब्लिश लागू किया जा सकता है। इस विषय में इलाहाबाद उच्च न्यायालय की खण्ड पीठ के न्याय वृष्ठांत एन. सी. श्रीवास्तव बनाम स्कूटर इण्डिया लि. 1987 (1) एन. एल. एन. 136 का उल्लेख किया जा सकता है। राजस्थान उच्च न्यायालय ने भी 1988 (1) एन. एल. एन. 724 के न्याय वृष्ठांत में धारा 2 (००) (बी बी) को रिटोस्टैब्लिश इफैक्ट से अपारेंटिव नहीं माना है। यहाँ पर यह उल्लेखनीय है कि जहाँ पर नियुक्ति भावेश में निश्चित अवधि का उल्लेख किया जाता है और जिसकी समप्ति के पश्चात काम होते हुए भी उक्त सेवा अवधि नहीं बढ़ाई जाती है तो धारा 2 (००) (बी बी) का लाभ नियोजक नहीं उठा सकता। इस विषय में पंजाब व हरियाणा उच्च न्यायालय दलबीर सिंह बनाम कृष्णेश सैण्डल कोषापरेटिव बैंक 1990 (2) एन. एल. एन. 576 के न्याय वृष्ठांत का उल्लेख किया जा सकता है। अतः मेरी राय में भी 2 (००) (बी बी) को रिटोस्टैब्लिश लागू नहीं किया जा सकता। माननीय उच्चतम न्यायालय ने बेंचट कम्पनी बनाम पी. डी. वासुदेवा, ए. आई. प्रार. 1970 (एस. सी.) 426 के न्याय वृष्ठांत में कहा है "औद्योगिक विवादों में इक्वीटी, एस्टोपल और बेचर प्रावि जैसी ट्रिब्यूनल मद्दे लागू नहीं किए जा सकते। गुजरात उच्च न्यायालय ने भी 1992 ई. आई. सी. 197 के न्याय वृष्ठांत में उक्त व्यवस्था को दोहराया है। अतः उपरोक्त समस्त कारणों से नियोजक प्रतिनिधि का उक्त तर्क भी निराधार मानते हुए अस्वीकार किया जाता है।

10. क्लेम की चरण सं. 4 में यह दर्ज किया गया है कि ओम प्रकाश शर्मा की सेवा मुक्ति के बाद बैंक की दीसा शाखा में ही सन 1972 में ही सतीश नागर व प्रहलाद मोणा भी नियुक्तियों की गई थी जिसकी सूचना ओम प्रकाश शर्मा को नहीं दी गई। क्लेम के प्रत्युत्तर की चरण सं. 4 में ही नियोजक ने यह स्वीकार किया है कि सतीश नागर की दिसम्बर 1973 और प्रहलाद मोणा को मार्च 1972 में अस्थाई रूप से नियुक्ति दी गई थी। नियोजक साक्षी श्री तेज प्रकाश शर्मा ने भी प्रति परीक्षा में यह स्वीकार किया है कि सतीश नागर की नियुक्ति दिसम्बर 1973 में हुई थी और प्रहलाद मोणा की नियुक्ति मार्च 1974 में हुई थी। नियोजक साथी प्रति परीक्षा में यह भी कहता है कि उसे पता नहीं कि उपरोक्त दोनों की नियुक्ति से पूर्व ओम प्रकाश शर्मा को नोटिस दिया था या नहीं। जिससे भी अधिक को कथनों की ही पुष्टि

होता है। क्लेम की चरण सं. 5 में हो यह दर्ज है कि उक्त दोनों कर्मचारियों को भी सन 1974 में सेवा मुक्त कर दिया और तत्पश्चात 16-8-84 को उक्त दोनों कर्मचारियों को निरमित नियुक्ति दी गई। नियुक्ति नियुक्ति बाबत प्रत्युत्तर में ही निर्णायक दर्ज करता है कि उक्त दोनों व्यक्तियों ने 270 दिवस में अधिक सेवा पूरी कर ली थी इसलिए सरकुलर न. पी. ई. प्रार. 115/83 दिनांक 10-1-83 अनुसार उक्त दोनों व्यक्तियों को नियमित नियुक्ति दी गई थी। अधिक ओम प्रकाश शर्मा ने 270 दिवस की सेवा पूरी नहीं की थी इसलिए उसे उक्त सरकुलर का लाभ नहीं दिया गया। अतः अभिवेद पर उपलब्ध गद्य से यह साबित है कि ओम प्रकाश शर्मा को जुलाई 1971 में सेवा मुक्ति के उपरान्त दिसम्बर 1973 में सर्वाश नागर व भावे में प्रहलाद मोणा को अस्थाई पदों के पद पर नियुक्त किया गया था जिन्हें सन 1974 में सेवा मुक्त कर दिया गया था इसलिए जितनी अवधि तक सतीश नागर व प्रहलाद मोणा का अस्थाई रूप से नियुक्ति दी गई थी उतनी अवधि यह अधिक वेतन प्राप्त करने का अधिकारी है मेर. राय में धारा 25-एच की अवहेलना होने पर अधिक पूर्वनिर्धारित होने का अधिकारी नहीं है बल्कि उतनी ही अवधि का वेतन प्राप्त करने का अधिकारी है जितनी अवधि के लिए उसकी सेवा मुक्ति के उद्देश्य से सूचित किए बिना नई नियुक्तियों की गई थी। मैं अधिक प्रतिनिधि के उक्त तर्क में सहमत नहीं हूँ कि अगर इस अधिक की नियोजन अवधि बढ़ाई जाती तो यह भी 270 दिवस की निर्धारित अवधि पूरी कर लेता और उक्त सरकुलर के आधार पर नियमित नियुक्ति प्राप्त कर लेता। अतः उपरोक्त समस्त कारणों से इस नियम का अधिनियम निम्न प्रकार से किया जाता है :

"श्री ओम प्रकाश शर्मा, कर्मक की जुलाई 1971 में सेवा मुक्ति करना उचित एक वर्ष है परन्तु तत्पश्चात् सतीश नागर व प्रहलाद मोणा को अस्थाई पद पर नियुक्त कर दिया और इस अधिक को सूचना नहीं दी गई इसलिए जितनी अवधि तक उक्त व्यक्तियों का अस्थाई रूप से नियुक्त रखा गया, उतनी अवधि तक का वेतन प्राप्त करने का यह अधिक अधिकारी है। अतः नियोजक ने अंतर तीन माह उक्त वेतन अदा नहीं किया तो 12 प्रतिशत वार्षिक दर से ब्याज भी देना पड़ेगा। 100 रुप. वर्षा मुकदमा भी देना पड़ेगा।"

11. अर्वाइ की प्रति भारत सरकार का प्रकाशनार्थ अस्तंगत धारा 17(1) अधिनियम भेजी जावे।

जगत सिंह, पीठावत अधिकारी

नई दिल्ली, 17 जुलाई, 1992

का.प्र. 2204 - रिटोस्टैब्लिश एक्ट, 1947 (1947 का 14) की धारा 17 के अनुवर्ण में, केन्द्रीय सरकार बूंदी विवादों के क्षेत्रीय आमीष बैंक के प्राथमिक के सदस्य नियोजकों और उनके कर्मचारियों के बीच, अनुबन्ध में निदिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-7-92 को प्राप्त हुआ था।

[संख्या एन-12012/291/86-बी II (ए)]

सुभाष चन्द्र शर्मा, ईस्क अधिकारी

New Delhi, the 17th July, 1992.

S.O. 2204.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bundi-Chittor

garh Kshetriya Gramin Bank and their workmen, which was received by the Central Government on 16-7-1992.

[No. L-12012/291/86-D. II (A)]

S. C. SHARMA, Desk Officer.

अनुबन्ध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी.आई.टी. 34/89

रफरेंस : भारत सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्रमांक एल 12012/291/86/डी II-ए.टी./बो.सी. I-दि. 3-3-89

श्री राम दयाल यादव, मार्फत श्रील इंडिया ग्रामीण बैंक वर्कर्स आर्गनाइजेशन

—प्रार्थी

बनाम

अध्यक्ष, बूंदी चित्तोड़गढ़ क्षेत्रीय ग्रामीण बैंक, बूंदी।

—अप्रार्थी

उपस्थित

अप्रार्थी की ओर से : श्री आर.के. काला
प्रार्थी की ओर से : श्री आर.सी. जैन
दिनांक प्रवाई : 10 जून, 1992

प्रवाई

भारत सरकार, श्रम मंत्रालय, नई दिल्ली ने निम्न विवाद इस न्यायाधिकरण को बास्ते अधिनियम औद्योगिक विवाद अधिनियम की धारा 10(1)(घ) के अंतर्गत प्रेषित किया है :

"Whether Shri Ram Dayal Yadav, Ex-Branch Manager employed by the Bund-Chittorgarh Kshetriya Gramin Bank, Bundi is a workman under the I. D. Act and if so, the termination of services of Shri Yadav by the bank is justified? If not, what relief, the ex employee is entitled to?"

2. श्रील इंडिया ग्रामीण बैंक वर्कर्स आर्गनाइजेशन, जयपुर, (जिसे तत्पश्चात प्रार्थी संघ संकेचित किया है) ने जरिए क्लेम प्रकट किया कि संबंधित श्रमिक श्री राम दयाल यादव जिसकी नियुक्ति बिपक्षी संस्थान में अधिकारी के पद पर हुई और प्रथम नियुक्ति बूंदी शाखा में ब्रांच मैनेजर के पद की गई थी जिसका नियुक्ति आदेश अनेक्स-ए-1 है। उक्त नियुक्ति दो वर्ष के परीक्षा काल पर हुई थी जिसकी अनुपालना में श्री यादव ने 7-6-85 को अपनी ड्यूटी जोहल कर ली थी। तत्पश्चात श्री यादव का स्थानान्तरण बिपक्षी संस्थान की शम्भपुरा शाखा में ब्रांच मैनेजर के पद पर कर दिया गया जहाँ पर 10-12-75 के आदेश (अनेक्स-4) द्वारा 12-12-85 से श्री यादव को सेवा मुक्त कर दिया गया। प्रार्थी संघ का कहना है कि बिपक्षी संस्थान में कार्यरत प्रबन्धक का ड्यूटी चार्ट अनेक्स-7 है। इस ड्यूटी चार्ट में क्रम सं. 2(X)(XI)(XLV) (XVII) (XVIII) XIX तथा (XXIV) पर उल्लिखित कार्य करते हैं न तो श्री यादव को अधिकार था और न ही उन्होंने कभी भी ये कार्य किये। इसके अतिरिक्त इस चार्ट को क्रम सं. 2 (I) (II) व (III) पर उल्लिखित कार्य श्री यादव प्रधान कार्यालय के निर्देशानुसार करते थे। चार्ट में उल्लिखित जोष कार्य भी श्री यादव करते थे। प्रार्थी संघ के अनुसार यद्यपि श्री यादव का पद नाम ब्रांच मैनेजर था परन्तु उसे कोई प्रशासनिक या सुपरवाइजरी अधिकार नहीं थे यहाँ तक कि ब्रांच पर कार्यरत कर्मचारियों के प्राक्स्थित भवकाश भी प्रधान कार्यालय से ही स्वीकृत किये जाते थे। श्री यादव को ब्रांच में नियुक्त कर्मचारियों के विषय किसी भी

प्रकार की प्रशासनात्मक कार्यवाही करने या उनका सुपरवीजन करने के अधिकार नहीं थे। श्री यादव जो कार्य करते थे वे कनेरीकल व मैनुअल प्रकृति के थे और उनका मासिक वेतन 1600 रुपये से कम था। सेवा मुक्ति के समय श्री यादव को अनेक्स-4 के अनुसार सहाई भत्ता व सहाय किराया भत्ता मिलाकर कुल 1555/ रुपये मिलने थे और इस प्रकार श्री यादव औद्योगिक विवाद अधिनियम 1947 की धारा 2(एम्) के अनुसार श्रमिक की परिभाषा में नहीं आते हैं।

3. प्रार्थी संघ यह भी कहता है कि सेवा मुक्ति आदेश दिनांक 10-12-85 में सेवा मुक्ति का कारण बैंक को श्री यादव की "सेवाओं की आवश्यकता नहीं" होना बताया है जबकि वास्तविकता इसके विपरीत है। अप्रार्थी ने आते पत्र क्रमांक 4167 दिनांक 22-11-85 (अनेक्स-2) द्वारा श्री यादव के विरुद्ध बैंक के रिजर्व में हेराफेरी का गंभीर आरोप लगाया था जिसका उत्तर भी श्री यादव ने 28-11-85 (अनेक्स-3) द्वारा दे दिया था। इनके बड़े स्पष्ट है कि श्री यादव की सेवा मुक्ति तथाकथित गुरुवारण के कारण की गई थी कि उनकी सेवाओं की आवश्यकता न होने के कारण। प्रार्थी संघ कहता है कि उक्त गुरुवारण के बारे में न तो श्री यादव को कोई आगे पत्र दिया गया और न ही आज तक कोई इसलिये सेवा मुक्ति आदेश अनुचित एवं अवैध है। अग्रे अन्तर्गत में अप्रार्थी को श्री यादव की सेवाओं की आवश्यकता नहीं थी तो उन गणव काँग्रेस कर्मचारी अधिकारी के सेवा मुक्त करना चाहिए था परन्तु जूनियर श्रमिक को सेवा में रखने हुए श्री यादव जैसे तिरिष्ठ श्रमिक को सेवा मुक्त करने से यही निष्कर्ष निकलता है कि वास्तव में गुरुवारण के कारण ही सेवा मुक्त किया गया है। प्रार्थी संघ के प्रत्यक्ष सेवा मुक्ति के उपरान्त अप्रार्थी द्वारा श्राव मैनेजर के पद की नहीं भर्ती भी कर ली गई है और इस प्रकार औद्योगिक विवाद अधिनियम की धारा 25-जी व ए व का भी उल्लंघन किया है। प्रार्थी संघ के अनुसार नियमानुसार श्री यादव को 10 जून 1992 तक 10-12-75 वेतन देना प्रोहित था जबकि एक माह का ही नोटिस देना दिया गया है। सेवा मुक्ति आदेश के दिनांक 10-12-85 का नोटिस देना अपील हो का भी जो बिना मर्यादा कारण बताये रद्द कर दी गई। प्रार्थी संघ की प्रार्थना है कि श्री यादव को औद्योगिक विवाद अधिनियम के अंतर्गत श्रमिक घोषित करने हुए दिनांक 12-12-85 से की गई सेवा मुक्ति अनुचित एवं अवैध घोषित कर दी जावे और उसे संवेतन ब्रांच मैनेजर के पद पर नियुक्त किया जाये।

4. अप्रार्थी ने जरिए प्रयुक्त क्लेम के रूपों को अस्वीकार करते हुए कहा है कि श्री आर.डी. यादव नियुक्ति के समय अधिकारी के रूप में नियुक्त हुए थे। उन्होंने डेढ़ माह का प्रशिक्षण प्राप्त कर शम्भपुरा शाखा में ब्रांच मैनेजर की हैसियत से कार्य प्रारम्भ किया था। उनकी प्रथम नियुक्ति दो वर्ष के परीक्षा काल के लिए की गई थी और नियुक्ति आदेश में ही परीक्षा अधिनियम में सेवा समाप्ति का स्पष्ट वर्णन किया गया था व बैंक के (हर्नचरो कृष) सेवा नियम, 1985 के अध्याय 2 के विनियम 8 का धारा 3(क) के अंतर्गत से सेवा मुक्त किए जाने योग्य थे। उक्त सेवा शर्तों के अनुसार ही 10-12-85 के आदेश से एक माह का नोटिस वेतन देकर श्री यादव को सेवा मुक्त किया गया था। अप्रार्थी का यह भी कहना है कि श्री आर.डी. यादव को ब्रांच मैनेजर की हैसियत से वे सभी कार्य करते होते थे जो ड्यूटी चार्ट में वर्णित किये गये हैं। प्रार्थी ने ड्यूटी चार्ट में से कुछ कार्यों को ही अपनी ड्यूटी बताया है जो सच्यों के विपरीत है। श्री यादव पूर्णतः स्वतंत्र रूप से ब्रांच मैनेजर की हैसियत से कार्य करते थे, उन्हें सभी मैनेजरीयल शक्तियाँ प्रदत्त थी और वे अपना निर्णय लेने के लिए ब्रांच मैनेजर की हैसियत से स्वतंत्र थे। शम्भपुरा शाखा में प्रबन्धक की हैसियत से श्री यादव को अपने अधीन कार्यरत सभी कर्मचारियों के कार्य पर नियंत्रण करने का

कार्य करना होता था। उन्हें अपनी शाखा में अंगकालीन दैनिक बेतन भोगी कर्मचारियों के नियुक्ति का अधिकार था और उन्होंने अपने कार्यकाल में दैनिक बेतन भोगी कर्मचारियों की नियुक्तियाँ भी की थी तथा उनको बेतन का भुगतान भी किया था। इसके अलावा श्री यादव को बैंक की योजना के अनुसार खानाधिकारियों को तथा अन्य लोगों को खाना खादि की स्वीकृति प्रदान कर भ्रष्टाचार बितरण करने का भी अधिकार था जो कार्य श्री यादव ने किये भी है, इस हेतु श्री यादव ने भ्रष्टाचार स्वीकृति के साथ साथ उनके री-येमेंट के संबंध में शर्तें भी तय की थीं। वे स्वयं बैंक का सम्पूर्ण कैश हँडल करने के संबंध में निर्णय लेने की स्वतंत्र थे। शाखा के जो दैनिक खर्च होते थे उनकी स्वीकृति भी स्वयं श्री यादव ही करते थे। बैंक के विकास के संबंध में समय-समय पर प्राप्ति को निर्णय लेने का अधिकार था। वे शाखा में अनुशासन रखने के भी अधिकारी थे तथा अपने अधीन कर्मचारियों से सफाईकरण आदि मांगने के अधिकार भी उन्हें प्रदत्त थे तथा अधीनस्थ अधिकारियों को शॉ-काज नोटिस आदि देने के लिए भी उन्हें अधिकार प्रदान थे। शाखा की ओर से दावा करने और विधि अनुसार नोटिस आदि देने के लिए भी उन्हें शक्तियाँ प्रदान थी। वे अपने अधीन कर्मचारियों को ड्यूटी बितरण करने थे और उनसे काम लेते थे तथा वे शाखा के मर्यादा अधिकारी थे। इसलिए औद्योगिक विवाद अधिनियम 1947 की धारा 2(ए) के अंतर्गत श्री यादव कर्मकार की परिभाषा में नहीं आते हैं और इस बात की सुझाई का आधार क्षेत्र भी इस व्याख्या की नहीं है।

5. अप्राप्ति यह भी कहते हैं कि श्री यादव क्लैरीकल प्रथा में अनुमान कार्य नहीं करते थे, उक्त कार्य करने के लिए श्री यादव के अधीन रीकडिया-लिपिक कार्यरत था और श्री यादव ने अंगकालीन दैनिक बेतन भोगी कर्मचारियों की भी नियुक्ति कर रखी थी। इसलिए भी धारा 2 (ए) के अनुसार वे कर्मकार नहीं थे।

6. अप्राप्ति के अनुसार श्री यादव को सेवा मुक्त करने समय किसी किस्म का धारोप पत्र नहीं दिया गया न ही सेवा मुक्ति आदेश में धारोपों का वर्णन किया गया। श्री यादव की सेवाएं परिवोक्षा पर भी जो एक माह के नोटिस द्वारा नियुक्ति पत्र एवं सेवा शर्तों के अनुसार समाप्त की गई थी। श्री यादव ने अप्राप्ति के यहां कुल 189 दिवस ही कार्य किया है तथा वह कर्मकार नहीं है इसलिए धारा 25-श्री व एच की धारणा करना आवश्यक नहीं था। श्री यादव तीन माह के नोटिस बेतन के अधिकारी भी नहीं हैं क्योंकि वह परिवोक्षा पर थे। बैंक के सेवा नियमों के अंतर्गत 3 माह के नोटिस बेतन का प्रावधान स्टार्ड कर्मचारियों के लिए है। श्री यादव द्वारा प्रस्तुत की गई अपील संचालक मण्डल द्वारा पूर्णतः अध्ययन करने के पश्चात् आधारहीन मानते हुए खारिज की गई है। इसलिए श्री यादव किसी अनुनाय के अधिकारी नहीं हैं।

7. अपने बयानों के समर्थन में श्री राम दयाल यादव ने स्वयं का शपथ पत्र पेश किया है जिससे नियोजक प्रतिनिधि ने जिरह की है। प्राथमिक साक्ष्य में डब्ल्यू-1 लगायत डब्ल्यू-8 फोटो प्रतियाँ पेश की हैं। इसके विपरीत नियोजक की तरफ से सर्वेक्षक आर. ए. निधानिया तथा अनिल कुमार शर्मा के शपथ पत्र पेश हुए हैं जिनसे संघ के प्रतिनिधि ने जिरह की है। प्राथमिक साक्ष्य में एम-1 लगायत एम-12 फोटो प्रतियाँ पेश की गई हैं। बंदी चितौड़ क्षेत्र प्रामोण बैंक सेवा नियम का प्रति भी पेश की गई है। तत्पश्चात् मैंने पत्रावली का अध्ययन किया और पत्राकारों के प्रतिनिधियों को विस्तारपूर्वक सुना।

8. पक्षकारों में मुख्य विवाद यही है कि क्या श्रमिक श्री राम दयाल यादव औद्योगिक विवाद अधिनियम 1947 की धारा 2 (ए) के अंतर्गत कर्मकार की परिभाषा में आता है। क्लेम में ही प्राप्ति संघ ने यह उल्लेख किया है कि श्री यादव की नियुक्ति अधिकारी के पद पर हुई

थी, उनका स्थानांतरण सम्भुपुरा शाखा पर प्रांच मैनेजर के पद पर किया गया था। शाखा प्रबंधक का ड्यूटी चार्ट अक्टूबर-7 है और नियुक्ति आदेश अक्टूबर-1 है। संघ का कथन यह है कि ड्यूटी चार्ट में क्रम सं. 2 (x) (xi) (xiv) (xvii) (xviii) (xix) व (xxiv) में उल्लिखित कार्य करने का अधिकार श्री यादव को नहीं था और न ही उन्होंने ये कार्य किए। उपरोक्त तथ्यों को अप्राप्ति ने स्वीकार किया है और कहा है कि ड्यूटी चार्ट अक्टूबर-7 के अनुसार श्री यादव को सभी कार्य करने का स्वतंत्र अधिकार था। फिर भी प्राप्ति संघ ने न तो रिजोइण्डर द्वारा यह स्पष्ट किया कि ड्यूटी चार्ट अक्टूबर-7 की क्रम सं. 2 (x) (xi) (xiv) (xvii) (xviii) व (xxiv) में उल्लिखित कार्य करने का श्री यादव को अधिकार किस प्रकार नहीं था, न ही श्री यादव ने अपने शपथ पत्र में उक्त विषय का स्पष्टीकरण दिया। यहां तक कि नियोजक साक्षी संबंधी सिमानिया व अनिल कुमार शर्मा से भी इस विषय में सुवादात्मक प्रति परीक्षा नहीं की। श्री यादव से अपेक्षा थी कि वे अक्टूबर-7 ड्यूटी चार्ट में दर्ज क्रम सं. 2 के (x) (xi) (xiv) (xvii) (xviii) व (xxiv) पर उल्लिखित कार्य करने के अधिकार उससे विपरीत बैंक ने कब और किस आदेश द्वारा छीन लिए थे। इसके अलावा मैं यह निष्कर्ष निकलता हूँ कि संभवतः श्री यादव के प्रतिनिधि ने ड्यूटी चार्ट अक्टूबर-7 का देखने के बाद क्रम सं. 2 (x) (xi) (xiv) (xvii) (xviii) (xix) (xxiv) के अधिकार नहीं होने बावत इसलिए उल्लेख किया कि इन अधिकारों से तो श्री यादव औद्योगिक विवाद अधिनियम की धारा 2 (ए) के अंतर्गत कर्मकार की परिभाषा में नहीं आयेगे। अक्टूबर-7 की क्रम सं. 2(x) (xi) (xiv) (xvii) (xviii) (xix) (xxiv) पर निम्नलिखित अधिकारों शाखा प्रबंधक को दिए गए थे।

"To have proper and complete check on expenditure, to check and pass the expenditure bills as per rules, to review the working of the bank including the developmental aspect at periodical intervals and keep head office informed of the progress, to maintain discipline at the branch and observe and comply with the rules, regulations, procedure instructions in regard to all matters including those relating to staff as framed and/or issued by head office from time to time, to issue memos and show cause notices, to any member of the staff in terms of the powers vested in him by bank, to serve legal notices, file, suit, obtain and execute decrees, take necessary steps to initiate continue and terminate necessary steps to initiate continue and terminate in terms of the powers vested in him by the bank, to utilise the services of staff posted under him to the optimum and kept control on staff/furniture, fixture/equipments/stationary and other affairs of branch."

हालांकि क्लेम के अनुसार अपने शपथ पत्र में तो श्री यादव ने यह दर्ज कर दिया कि ड्यूटी चार्ट अक्टूबर-7 में दर्ज उपरोक्त कार्य करने के अधिकार उसे नहीं थे और न ही उन्होंने उक्त कार्य कभी किए थे परन्तु प्रति परीक्षा करने पर श्री यादव स्वीकार करते हैं कि यह ठीक है कि प्रदर्श एम-8 लगायत एम-12 में वर्णित कैबिनेट लेबर की भुगतान मैंने किया था इन व्यक्तियों के बारे में वेयरमैन साहब के आदेश तो नहीं आए थे। तत्पश्चात् श्री यादव यह भी स्वीकार करते हैं कि वह बैंक के भुगतान के लिए पर्सिंग आथोरिटी थे और उन्होंने एम-13 व 14 की बतौर पर्सिंग आथोरिटी के पास किया है। एम-15 व 16 लोन छोटे व्यापारियों को दिया है। इन पर प्रचार कार्यालय की स्वीकृति नहीं है इस पर तो हमारी स्वीकृति होती है लोन वितरण करने की। तत्पश्चात् श्री यादव स्वीकार करते हैं कि एम-15 व एम-16 हमारे पास ही रहते हैं ये बैंक आफीस नहीं आते, इन फार्मों पर लोन स्वीकृत करने की मेरी स्वीकृति है। एम-17 व एम-18 पर ए. टू की मेरे हस्ताक्षर हैं। श्री यादव ने यह भी स्वीकार किया कि उनका 3,000 रुपए तक लोन स्वीकृत करने का अधिकार दिया हुआ था। तत्पश्चात् भी नियोजक प्रतिनिधि के सुवादात्मक

प्रश्न पर श्री यादव ने स्वीकार किया है कि एप्रैल 20 लगायत एम-24 पर ए. टू बी मैनेजर की हैसियत में उन्होंने के वस्ताखत हैं। एम-20, 21 व 22 के खाना नं. 5 में श्री यादव द्वारा ही राशि स्वीकृत की गई है। श्री यादव का कहना है कि उसने प्रधान कार्यालय की स्वीकृति मिलने पर एम-20 लगायत एम-22 की एडवांस स्वीकृति दी थी परन्तु मथाकथित स्वीकृति प्रधान कार्यालय से आने बाबा न तो नियोजक साधियों ने गुहावात्मक प्रति परीक्षा की है और न ही ऐसी किसी स्वीकृति की प्रति पेश की गई है। अगर वास्तव में श्री यादव के कथनों में सत्यता होती तो मथाकथित स्वीकृति के आदेश की प्रति पेश करवाने हेतु इस ग्यापालय में प्रार्थना पत्र पेश करते। श्री यादव स्वीकार करते हैं कि जिस शाखा में वे काम करने थे उसमें उनसे कोई उच्च अधिकारी कार्यरत नहीं था तथा उनके साथ एक कैशियर था। इसके अलावा श्री यादव ने प्रति परीक्षा में नियोजक प्रतिनिधि के सुझावात्मक प्रश्नों को अस्वीकार किया है कि उसे आकस्मिक अवकाश देने का अधिकार था तथा उसकी दैनिक वेतन पर आकस्मिक कर्मचारियों की नियुक्ति के भी अधिकार थे। श्री यादव के उपरोक्त प्रपुष्ट कथनों के आधार पर यह स्वीकार नहीं किया जा सकता कि उनको इट्टी चार्ट अर्नैसकर-7 में दर्ज सभी अधिकार नहीं हो। विशेषकर उन परिस्थितियों में जब कि श्री यादव ने प्रति परीक्षा में स्वीकार किया है कि उसने एम-8 से एम-12 में दर्ज राशि का भुगतान किया है जिस पर उसके हस्ताक्षर हैं यह उल्लेखनीय है कि एम-8 लगायत एम-12 द्वारा दैनिक वेतन पर नियोजित व्यक्तियों को वेतन का भुगतान किया गया है। अप्रार्थी के अनुसार उक्त व्यक्तियों की नियुक्ति भी श्री यादव द्वारा ही की गई थी। श्री यादव ने उक्त तथ्यों को अस्वीकार किया है क्योंकि दैनिक वेतन पर नियुक्त व्यक्तियों के नियुक्ति आदेश जारी नहीं किए जाने, मौखिक रूप से नियुक्ति दी जाती है। श्री यादव ने एम-13 व एम-14 में भी अपने हस्ताक्षर स्वीकार किए हैं जिसके अनुसार बैंक की शम्भूपुरा शाखा में जो लेन-देन हुआ था वह श्री यादव के हस्ताक्षरों से ही हुआ था। श्री यादव ने एम-15 लगायत एम-24 पर भी अपने हस्ताक्षर स्वीकार किए हैं। प्रदर्श एम-15 ओ. जे. पी. शर्मा का लोन हेतु आवेदन पत्र है जिस पर 10-9-85 को श्री यादव ने निरीक्षण प्रतिवेदन तैयार किया था और 2,000/- रुपए का लोन प्रदर्श एम-20 द्वारा स्वीकृत किया गया। इसी प्रकार एम-16 आ. ओ. एल. डोगी के लोन का आवेदन पत्र है जिस पर एम-19 द्वारा श्री यादव ने 3,000/- रुपए का लोन स्वीकृत किया था। एक-17 व एम-18 द्वारा श्री राजेश यादव को श्री राम दयाल यादव द्वारा 1500/- रुपए का लोन स्वीकृत किया गया था। प्रदर्श एम-20 लगायत एम-22 द्वारा श्री राम दयाल यादव ने प्रधान कार्यालय, बूंदी की उन व्यक्तियों को सूचना भेजी थी जिनका लोन स्वीकृत किया था। एम-23 व 24 मध्यवी स्टेटमेंट हैं जो हेड ऑफिस को भेजे गए हैं। डब्ल्यू-9 व 10 पर श्री चार. डी. यादव द्वारा शाखा प्रबंधक, शम्भूपुरा की हैसियत से प्रधान कार्यालय, बूंदी की सूचना भेजी गई। डब्ल्यू-11 द्वारा प्रधान कार्यालय बूंदी ने श्री चार. डी. यादव को शाखा प्रबंधक, शम्भूपुरा की हैसियत से क्षमतापूर्व करने के संबंध में सूचना मांगा था। डब्ल्यू-13 शम्भूपुरा शाखा की हस्तक्षेप रिपोर्ट है। उपरोक्त प्रामाणिक साक्ष्य से भा यहाँ निष्कर्ष निकलता है कि श्री चार. डी. यादव को वास्तव में अप्रार्थी बैंक की शम्भूपुरा शाखा के प्रबंधक के सभ अधिकारी प्रवर्त थे।

9. प्रार्थी संघ की अर्जी दिनांक 3-1-91 पर 7-3-91 को प्रार्थी संघ द्वारा प्रस्तुत 10 प्रलेखों का पेश करने का अनुमति दी था जिनमें से 5-11-85 का भी एक पत्र अप्रार्थी द्वारा श्री राम दयाल यादव को लिखा गया था जिसकी फांटी प्रति पेश है जो अप्रार्थी के प्रतिनिधि द्वारा एप्रैल की हुई है, इस पत्र में भी श्री यादव का शाखा प्रबंधक, शम्भूपुरा की हैसियत से ही संबोधित किया गया है और इसके द्वारा अप्रार्थी ने श्री यादव को निर्देश दिए थे कि प्रधान कार्यालय के पत्र क्रमांक एच. ओ./सो. आई. चार./84-1/1 दिनांक 12-7-84 द्वारा प्रवर्त अणुप्रवात करने के अधिकारों का उपयोग तुरंत प्रभाव से बंद कर देने और अपना शाखा के निरीक्षण के दौरान पाई गई अनियमितताओं का पहले सुधार करेंगे। इस

मध्य यदि अणु स्वीकृति हेतु कोई आवेदन पत्र प्राप्त हो तो उन्हें प्रधान कार्यालय की स्वीकृति हेतु अपनी सिफारिशों सहित प्रस्तुत करेंगे। 5-11-85 के उक्त पत्र से भी यही निष्कर्ष निकलता है कि इनके पूर्व श्री यादव की लोन स्वीकृत करने के स्वतंत्र अधिकार थे इनपर श्री यादव प्रबंधक की श्रेणी में आते हैं।

10. मैंने प्रार्थी संघ द्वारा प्रस्तुत साक्ष्य का ही सर्वप्रथम विश्लेषण इसलिए किया है क्योंकि प्रार्थी संघ का ही यह कथन था कि श्री यादव की नियुक्ति चाहे अधिकारी के पद पर हुई हो और चाहे उसे शम्भूपुरा शाखा के जॉब मैनेजर के पद पर पदस्थापित किया गया था, परन्तु वास्तव में वह धारा 25 ए के अंतर्गत कर्मकार ही था। चूंकि प्रार्थी संघ द्वारा ही उक्त अभ्यावेदन किया गया था इसलिए उसे साबित करने का भार भी प्रार्थी संघ पर ही था।

11. विपक्षी नियोजक द्वारा प्रस्तुत साक्ष्य का विश्लेषण निम्न प्रकार से है। स्लेम के प्रस्तुत कोचरण सं. 3 लगायत 8 में विपक्षी ने यह दर्ज किया था कि श्री यादव को शाखा प्रबंधक की हैसियत से शम्भूपुरा शाखा में अपने अधीन कार्यरत सभी कर्मचारियों पर नियंत्रण करना होता था, उसे अंशकालीन दैनिक वेतन भोगी कर्मचारियों की नियुक्ति का अधिकार था और उसने अपने कार्यकाल में अंशकालीन दैनिक वेतन भोगी कर्मचारियों की नियुक्तियां भी की थीं और उनको वेतन का भुगतान भी किया था। श्री यादव ने बैंक के खाताधारियों को अपना बैंक की योजनानुसार अन्य लोगों को लोन प्राप्ति की स्वीकृति भी प्रदान की थी और पदभुगतान की शर्तें भी तय की थीं। इसके अलावा श्री यादव बैंक का कैश हॉल करने के संबंध में निर्णय लेने का स्वतंत्र अधिकार रखते थे, शाखा के दैनिक खर्चों की स्वीकृति भी श्री यादव स्वयं करते थे। उन्हें अधीनस्थ कर्मचारियों से स्पष्टीकरण प्राप्ति मांगने की शक्तियां प्रवर्त थीं, वे अपने अधीन कर्मचारियों को इट्टी वितरित करते थे और उनसे काम लेते थे, उनके आकस्मिक अवकाश स्वीकृत करने की भी शक्तियां सेवा नियमों के अनुसार शाखा प्रबंधक को ही प्रवर्त थी। शाखा की तरफ से दावा करने नोटिस प्राप्ति देने की शक्तियां भी शाखा प्रबंधक की ही थीं। उक्त तथ्यों को साबित करने हेतु नियोजक साक्षी श्री सिधानिया महाप्रबंधक ने अपने जपब पत्र में दर्ज किया है कि श्री यादव की नियुक्ति प्रदर्श एम-1 द्वारा आफिसर के पद पर की गई थी। एम-2 डिकेरेयर श्री यादव द्वारा दिया हुआ है। डेढ मास का प्रशिक्षण प्राप्त करने के बाद श्री यादव को शम्भूपुरा शाखा में जर्नल प्रबंधक नियुक्त किया गया था। जॉब मैनेजर की इट्टी प्रदर्श एम-3 में दर्ज है। श्री यादव को भी जॉब मैनेजर की हैसियत से इस इट्टी चार्ट में वर्णित कार्य करने की शक्ति थी जिन्हें वह पूर्णतया स्वतंत्र रूप से जॉब मैनेजर का हैसियत से करते थे। उन्हें मैनेजीरियल शक्तियां प्रवर्त थी। शाखा प्रबंधक की हैसियत से वे अपने अधीन कार्यरत सभी कर्मचारियों पर नियंत्रण रखते थे। श्री यादव ने शम्भूपुरा शाखा में अंशकालीन कर्मचारियों के रूप में सर्वश्री जातिनाथ व एस.एल. सोनी को नियुक्त किया था जिन्हें भुगतान भी अपने ही आवेदनों से किया था। भुगतान बाउचर एम-10 लगायत एम-12 है। श्री यादव ने सर्वश्री जे.पा. शर्मा व ओंकार लाल के आवेदन पत्रों में क्रमशः 2,000, व 3,000 के अणु स्वीकृति किये थे जो प्रदर्श एम-15 व एम-16 हैं। श्री यादव ने ही अणु का पदभुगतान की शर्तें भी तय की थीं। शाखा के दैनिक खर्चों की स्वीकृति भी श्री यादव ने एम-23 व एम-24 द्वारा की है। पंचायत समिति की बैठकों में भी श्री यादव बैंक की ओर से प्रतिनिधित्व करते थे। 17-8-85 के मोटिस को अनुपालना में आयोजित मोटिंग में दिनांक 27-8-85 को पंचायत समिति चित्तौड़गढ़ में श्री यादव ने बैंक की ओर से प्रतिनिधित्व किया था श्री यादव के अधीन रोकड़िया निषिद्ध कार्यरत था। श्री यादव शम्भूपुरा शाखा के बाउचर्स प्राप्ति पेश करने के लिये भी अधिकृत थे। भुगतान पासिंग पुस्तिका एम-13 व एम-14 पर

श्री यादव ने पामिंग अधिकारी के रूप में हस्ताक्षर किये हैं। ग्राम मैनेजर की हैमियन में श्री यादव ने उनके द्वारा स्वीकृत पञ्चम का शिवराम बैंक के प्रधान कार्यालय का एम-20 तथा एम-22 द्वारा भेजा है। ऐसे ही कथन श्री अनिल कुमार शर्मा प्रबन्धक अप्रार्थी बैंक में भी अपने शपथ पत्र में किये हैं। इन दोनों प्रबन्धक साक्षियों से विस्तारपूर्वक प्रति परीक्षा की गई है। प्रति परीक्षा में पूछे गये कि साक्षी प्रश्न के उत्तर को टापने का किसी भी साक्षी ने प्रयास नहीं किया है और सभी प्रश्नों का उत्तर सीधा व समाधानकारी दिया है तथा कहीं पर भी विवक्षित नहीं हुए हैं। इनमें से किसी भी साक्षी का श्री यादव के विरुद्ध भिन्न कथन करने का कोई हित या हेतु भी प्रदर्शित नहीं होता। प्रार्थी सद्य की तरफ से भी ऐसे सुझावात्मक प्रश्न इन साक्षियों से प्रति परीक्षा में नहीं किये गये जिससे इनका श्री यादव के विरुद्ध कोई मनमुटाव या वैमनस्यता प्रकट होती हो। अभिप्राय यह है कि दोनों साक्षी प्रति परीक्षा की कसौटी पर खरे उभरे हैं तथा इनके मोखिक कथनों की पुष्टि प्रावेक्षिक साक्ष्य से भी होती है जिन्हें श्री राम दयाल यादव ने भी स्वीकार किया है।

12 दोनों पक्षकारों की तरफ से बहुत के दौरान कुछ न्याय दृष्टान्तों का भी उल्लेख किया गया था जिसका विपरीत भी वादगमन सामने के तथ्यों और परिस्थितियों के सर्वम में करना आवश्यक है।

13 श्री कामा, नियोजक प्रतिनिधि की तरफ से बिमल कुमार बनाम लेखा कोर्ट कानपुर ए आई आर 1988 (एस सी) 384 का उल्लेख किया गया है जिसमें पिटीशनर मैनेजिन विभाग में इजीनियर के पद पर थे और अपने विभाग के कार्यका सुपरीजन करते थे जिसे अवकाश स्वीकृत करने और अनुशासनात्मक कार्यवाही प्रारम्भ करने तथा भ्रष्टाचार नियुक्ति करने के अधिकार थे जो माननीय उच्चतम न्यायालय के मतानुसार कर्मकार नहीं पाये गये। विवेचनाधीन विवाद में तो श्री यादव को इनसे कहीं अधिक अधिकार प्रदत्त थे इसलिए वे भी कर्मकार की परिभाषा में नहीं माने जा सकते। मदीकान सविन कोप्रोपेटिव बैंक लि बनाम लेबर कोर्ट 1987 (71) एफ जे आर 322 पर उपलब्ध केरला उच्च न्यायालय का भी श्री काला द्वारा उल्लेख किया गया है जिसमें निम्न मत व्यक्त किया गया था।

“Whether the rules governing the service of the manager of a branch of a bank show that he is immediate and near total control of the function of the branch, though under the secretary and subject to the control of the board of director and that he is the custodian of responsible for maintenance of its valuable records and had a significant part to play in initiating disciplinary action against members of the staff under his control and that he had authority to sanction loans and he had practically no clerical duty, whatever clerical duties he had were only negligible, all these are clear indications that the duties and functions were mostly managerial or administrative taking him out of the designation of workman of S 2(a) of the Industrial Dispute Act, 1947”

विवेचनाधीन विवाद की तरह इस शाखा प्रबन्धक के अधीन की एक कलक कम कैशियर था उक्त अधिनियम का शाखा प्रबन्धक उक्त शाखा में वरिष्ठतम व्यक्ति नहीं था जबकि श्री यादव शम्भुपुरा शाखा में वरिष्ठतम अधिकारी थे। इसलिए इस न्याय दृष्टान्त के अनुसार भी श्री यादव को जो अधिकार प्रदत्त थे उनके अनुसार वह प्रबन्धक की श्रेणी में ही आते हैं न कि कर्मकार की। अर्णव कुमार बनाम यूनाइटेड इंडस्ट्रियल बैंक 1979 लेबर आई सी 508 पर उपलब्ध कलकत्ता उच्च न्यायालय के न्याय दृष्टान्त का भी श्री काला द्वारा उल्लेख किया गया है जो भी बैंक के शाखा प्रबन्धक के अधिकारों में सम्मिलित था और उच्च शाखा प्रबन्धक ने भी यह स्वीकार किया था कि इयूटी चार्ट में अंकित अधिकार उसे प्रदत्त थे। फलस्वरूप माननीय उच्च न्यायालय द्वारा निम्न मत व्यक्त किया गया

“In his evidence the plaintiff admitted that he was enjoying all the power and privileges which were vested in all other branch managers. The plaintiff was exercising all managerial powers vested in him. On account of the nature of duties attached to the post of a manager, the plaintiff could not come under the definition of ‘workman’ as given in the Act”

कर्नाटका उच्च न्यायालय के न्याय दृष्टान्त श्री छन्ना बनाम लेबर कोर्ट 1991 (63) एफ एस आर 80 के न्याय दृष्टान्त में भी फर्म के प्रबन्धक को प्रदत्त अधिकारों से सम्बन्धित विवाद था। माननीय न्यायाधीशों के मतानुसार

“The petitioner had admitted in his evidence that he was working as a manager, the duties assigned to him was to apply for permit as the firm was dealing in some enterprises and he used to contact the commissioner of Excise to get the endorsement on permits to purchase liquor from distilleries. He was also conducting the sales and one clerk was engaged to write the accounts. He was also maintaining the day book and ledgers and he was in charge of opening the office by keeping the key with him and after the business he was responsible for closing the office by putting the lock and key... Since the petitioner failed to prove that he was a workman as contemplated in S 2(a) of the Act this court will not interfere with the order passed by the Labour Court”

विवेचनाधीन विवाद में भी श्री यादव के अधीन एक रोकड़िया कार्यरत था जो कैश बुक व लेजर प्रावि का कार्य करता था श्री यादव ने कभी भी शाखा की कैश बुक या लेजर में प्रविष्टियाँ नहीं की, न ही कभी शाखा कार्यालय खाता खोला या बंद किया जो प्रलेख पेश हुए हैं उनके अनुसार तो शाखा की कैश बुक व लेजर रोकड़िया ही लिखता था और श्री यादव तो प्रविष्टियों पर अपने हस्ताक्षर करते थे। पर परिस्थितियों में उपरोक्त न्याय दृष्टान्त के अनुसार भी श्री यादव प्रबन्धक की श्रेणी में ही आते थे न कि कर्मकार की श्रेणी में मध्य प्रदेश उच्च न्यायालय के एस के जैन बनाम डिविजनल मैनेजर सी आई एस. कापरिशन अबलपुर 1991(1) एस एल एन 743 के न्याय दृष्टान्त में भी तथ्य विवेचनाधीन विवाद के तथ्यों मिलते जुलते थे। वहाँ पर भी पिटीशनर की नियुक्ति मैनेजर के पद पर हुई थी हाजिरी रजिस्टर में भी उसे मैनेजर ही दर्ज किया गया था जिस पर यह हस्ताक्षर करता था माननीय न्यायालय के मतानुसार

“The learned Labour Court after appreciating the evidence on record, has come to a finding that the petitioner was a manager and he was always recorded in the official record as a manager and he never objected to that position. On the attendance register also he signed on behalf of the administration. Therefore, the Labour Court was of the view that the petitioner was working in the managerial capacity to find nothing wrong with the aforesaid finding of the Labour Court”

उपरोक्त न्याय दृष्टान्तों के तथ्य और परिस्थितियाँ विवेचनाधीन विवाद के तथ्य और परिस्थितियों से मिलती जुलती थी और उपरोक्त न्याय दृष्टान्त विवेचनाधीन विवाद पर शान प्रशान्त लावू होते हैं।

14 श्री आर सी जैन योग्य प्रतिनिधि प्रार्थी सद्य का तर्क यह था जब तक किसी व्यक्ति को सेवा में नियुक्ति और सेवा मुक्ति के अधिकार प्रदत्त नहीं किये जाते हैं जब तक वह प्रबन्धक की श्रेणी में नहीं आ सकता और कर्मकार ही कहायेगा चाहे उसका पदनाम कुछ भी क्यों न हो। अपने कथनों के समर्थन में श्री जैन ने ऐसा कोई न्याय दृष्टान्त प्रस्तुत नहीं किया जिसमें यह निष्कर्ष निकलता हो कि सेवा मुक्ति का अधिकार प्रदत्त होने से ही कोई व्यक्ति प्रबन्धक की कैटेगरी में आयेगा उसके अभाव में चाहे जितने ही अधिकार उसे प्रदत्त किये गये हो वह कर्मकार ही

कहावेगा। माननीय उच्चतम न्यायालय ने 1965 ए. आई. प्रार. एस. सी. (ii) में निम्न गत व्यक्त किया है :

"When can a person be said to have been employed in a position of management ? It is difficult to lay down exhaustively all the tests which can be reasonably applied. Several considerations would naturally be relevant :

1. Whether the person had power to operate bank account or could he make payments to third party and enter in to agreement with them on behalf of employer;
2. whether he was entitled to represent the employer to the world at large in regard to the dealing of the employer with strangers;
3. Did he have authority to supervise the working of the clerk employed in the establishment.
4. Did he had control and charge of correspondence;
5. Could he make commitments on behalf of the employer;
6. Could he grant leave to the members of the staff and held disciplinary proceedings against them;
7. Has he power to appoint members of the staff or punish them.

This and similar other tests may be usefully applied in determining the question of the status of an employee."

तत्पश्चात् ए. आई. प्रार. 1967 (एस. सी. 678 तथा ए. आई. प्रार. 1971 एस. सी. 982) के न्याय दृष्टान्तों में निम्न मत व्यक्त किया गया :

"The principle is now well settled that workman must be held to be employed to do that work which is not the main work he is required to do. Even though he may be incidentally doing other type of work. There can be no quarrel with the proposition that if the main duties of an employee are only supervisory in nature then certainly he could not be excluded from the category nor can he be deprived of the benefits even though for a short period he is required to discharge additional or incidental function."

उपरोक्त न्याय दृष्टान्तों में व्यक्त किये गये मतानुसार श्री मैने श्री यादव को प्रदत्त अधिकारों का विमोचन किया तो पाया कि ड्यूटी चाट अन्वेषण 7 के अनुसार श्री यादव को शम्भूपुर शाखा में अपने अधीन कर्मचारियों पर नियंत्रण का अधिकार था, उसे अपने अधीनस्थ कर्मचारियों को व्यवस्था स्वीकृत करने का अधिकार था, उसे बैंक के नियमों के अनुसार खाताधिकारियों को तथा अन्य लोगों को लोन आवेदन की स्वीकृति प्रदान करने का अधिकार था, उसे लोन के लिए रीपेमेंट की शर्तें, भय करने का अधिकार था, अंशकालीन दैनिक वेतन भोगों व्यक्तियों को नियुक्त करने का अधिकार था। उपरोक्त सभी कार्य अपने कार्यकाल के दौरान शम्भूपुर शाखा में श्री यादव ने किये भी थे। श्री यादव की नियुक्ति 7-6-85 को हुई थी और 12-12-85 को उनको सेवा मुक्त कर दिया गया इसलिए करीब 6 माह ही वे शाखा प्रबन्धक नियुक्त रहे थे और उक्त अवधि में किसी अधीनस्थ कर्मचारी को कारण बताओ नोटिस देने या उनके विरुद्ध अनुशासनिक कार्यवाही करने का कोई अवसर ही नहीं आया, इससे यह निष्कर्ष नहीं निकाला जा सकता कि श्री यादव को अपने अधीनस्थ कर्मचारियों के विरुद्ध अनुशासनिक कार्यवाही करने का अधिकार ही न हो। अतएव श्री जैन संघ के प्रतिनिधि की यह प्रथम आपत्ति निराधार मानते हुए अग्रस्त की जाती है।

15. श्री जैन, संघ प्रतिनिधि ने कुछ न्याय दृष्टान्तों को भी वहल कर दौरान प्रस्तुत कर यह प्रकट करने का प्रयास किया था कि श्री यादव को जो अधिकार प्रदत्त थे उससे तो वह कर्मकार की ही श्रेणी में आता है। इस विषय में श्री जैन ने उच्चतम न्यायालय के न्याय दृष्टान्त डी. पी. माहेश्वरी बनाम देहली प्रणामन 1983 (60) एफ. जे. प्रार. 333 का उल्लेख किया जिसमें श्री माहेश्वरी ग्राफ़िक्स प्राचीसर या प्राचीसर आन स्पेशल ड्यूटी ग्रुप स्टोर पवेल प्राचीसर के पद पर नियुक्त थे परन्तु पद नाम मात्र से ही श्री माहेश्वरी को प्रबन्धक की श्रेणी में नही रखा गया और श्रम न्यायालय के सगल जो प्रालेखिक व मौखिक साक्ष्य थाई उससे यह निष्कर्ष निकला कि वास्तव में जो अधिकार श्री माहेश्वरी को प्रदत्त किये गये थे वे तो क्लेरीकल कार्य से संबंधित थे जैसे ड्राफ्ट तैयार करना, रजिस्टर तैयार करना और अपने वरिष्ठ अधिकारियों व अधिवक्ताओं से मार्ग दर्शन प्राप्त करना और इन परिस्थितियों में श्री माहेश्वरी का धारा 2 (एम) के अन्तर्गत कर्मकार पाया गया। श्री जैन की तरफ से उच्चतम न्यायालय के एक और न्याय दृष्टान्त वेद प्रकाश गुप्ता बनाम इल्टन केबिल इंडिया 1984 (64) एफ. जे. प्रार. 433 का भी उल्लेख किया गया है जिसमें श्रम न्यायालय ने पत्रकारों की संस्था के उपरान्त यह निष्कर्ष निकाला कि श्री वेद प्रकाश गुप्ता की नियुक्ति विपक्षी फैक्ट्री में सुरक्षा अधिकारी के पद पर थी तथा उसका कार्य उसके अधीन चौकीदारों को कार्य पर लगाना था तथा बाथ एंड बार्ड पर भोजना था और अग्न फैक्ट्री में कोई विजिटर आये तो उनके साथ जाना था एवं फैक्ट्री के रजिस्टर में आने वाले विजिटर व माल का उल्लेख करता था। श्री वेद प्रकाश गुप्ता को न तो किसी की नियुक्ति का अधिकार था और न ही किसी की सेवा मुक्ति का अथवा अनुशासनिक कार्यवाही प्रारम्भ करने का और उपरोक्त परिस्थितियों में श्री गुप्ता को सौंपे गये कर्तव्य प्रबंधक की अथवा पर्यवेक्षीय श्रेणी में नहीं पाये गये। अर्जुन गोविन्द राज राव बनाम मीबा गायजी आफ इंडिया लि. बाम्बे 1985 (67) एफ. जे. प्रार. 102 पर उपलब्ध उच्चतम न्यायालय के न्याय दृष्टान्त का भी उल्लेख श्री जैन द्वारा किया गया है। उक्त न्याय दृष्टान्त में श्री अर्जुन गोविन्द राज राव का पद नाम तो ग्रुप लीडर था और उसके अधीनस्थ कार्य करने वालों का सुपरवीजन भी उसे करना पड़ता था परन्तु उसका मुख्य कार्य बैंक री-गन्तीनियेशन स्टेटमेंट तैयार करना था इसलिए माननीय उच्चतम न्यायालय के मतानुसार उसका कार्य प्रबन्धक अथवा पर्यवेक्षक श्रेणी का नहीं था और धारा 2 (एम) के अन्तर्गत वह कर्मकार पाया गया। नेशनल इंजीनियरिंग इंस्टीट्यूट बनाम श्री श्रीकिशन बगरिया 1988 एस. सी. सी. 428 पर उपलब्ध उच्चतम न्यायालय के न्याय दृष्टान्त का भी सहारा श्री जैन द्वारा लिया गया है जिसमें श्री बगेरिया इंटरनल प्राचीटर थे जिसका मुख्य कार्य चेंकिंग बलर्क का था और प्रबंधकों को रिपोर्ट करने का था इसलिए उक्त न्याय दृष्टान्त के विशेष तथ्यों और परिस्थितियों के संदर्भ में उसे सुपरवाइजर की श्रेणी में नहीं पाया गया। उपरोक्त सभी न्याय दृष्टान्तों के तथ्य और परिस्थितियों विवेचनाधीन विवाद के तथ्यों और परिस्थितियों से मिलते जुलते नहीं थे इसलिए उक्त न्याय दृष्टान्तों से श्री यादव को कोई लाभ नहीं विवादा जा सकता। उपरोक्त न्याय दृष्टान्तों में प्रतिपादित सिद्धान्तों के अनुरूप ही मैंने इस विवाद में प्रस्तुत मौखिक व प्रालेखिक साक्ष्य का विमोचन करने हुए ही यह निष्कर्ष निकाला है कि श्री यादव के मुख्य कार्य एवं दायित्व प्रबंधकीय एवं पर्यवेक्षकीय श्रेणी के थे न कि मिनिस्ट्रियल और क्लेरीकल श्रेणी के। श्री जैन योग्य प्रतिनिधि संघ की तरफ से राजस्थान उच्च न्यायालय के न्याय दृष्टान्त फुलचंद बनाम राजस्थान राज्य 1985 प्रार. एन. प्रार. 365 का सहारा लिया गया है जिसमें कृषि ऋणदायी समितियों के व्यवस्थापकों के बाबत विवाद था। नियोजक के अनुसार उपरोक्त व्यवस्थापक प्रबंधकीय श्रेणी में आते थे तथा वे ही शाखाओं के प्रभारी अधिकारी थे परन्तु ऋण वसूली के अधिकार इन व्यवस्थापकों की बजाय अधिशासी अधिकारियों को थे। समिति के व्यवस्थापकों को तो पैमेंट नोटिस जारी करने का ही अधिकार था। उक्त नोटिस के उपरान्त भी अगर कोई सदस्य ऋण की राशि जमा नहीं करता था तो उक्त व्यवस्थापक मामले को अधिशासी अधिकारी अथवा सहायक रजिस्ट्रार को पठा देते थे। समिति के व्यवस्थापक का पद तो श्रम विनियम सहायक संस्थान में सबसे कनिष्ठ दर्जे का था और उन्हें

चतुर्थ श्रेणी कर्मचारी के वेतन के जितना ही वेतन 250 रुपये प्रति माह मिलता था और उनकी हैमियम लोन रिकवरी क्लर्क अथवा कैशियर से अधिक की नहीं थी और इन परिस्थितियों में माननीय उच्च न्यायालय ने कृषि ऋणदात्री सहकारी समिति के व्यवस्थापकों को प्रबंधकीय अथवा पर्यवेक्षकीय श्रेणी में नहीं पाया और धारा 2 (एस) के अन्तर्गत कर्मकार की श्रेणी में परिभाषित किया गया। विवेचानाधीन विवाद में तो मौखिक व प्रालेखिक साक्ष्य प्रामाणिक पर उपलब्ध हुई है उससे तो श्री राम बयाल यादव को बैंक की शम्भुपुरा शाखा के प्रबंधक की हैमियम से अपने अधीनस्थ कर्मचारियों के कार्य पर नियंत्रण करने, उनका आक्रामक अवकाश स्वीकृत करने, अणकालीन दैनिक वेतन भोगी कर्मचारियों की नियुक्ति करने, उनको वेतन का भुगतान करने, बैंक के खाताधारियों अथवा अन्य लोगों को 3000 रुपये की राशि तक का लोन स्वीकृत करने एवं उसके री-पेमेंट की शर्तें तय करने, शाखा का कैश हँडिल करने आदि के अधिकार प्रवर्तन थे जिनका उसने प्रयोग भी किया था इसलिए मेरी राय में श्री यादव के मुख्य कार्य एवं दायित्व ड्यूटी चार्ट अर्नैक्सचर 7 के अनुसार होने से वह प्रबंधकीय एवं पर्यवेक्षकीय श्रेणी में आते थे और धारा 2 (एस) के अन्तर्गत कर्मकार की श्रेणी में उसे नहीं पाया जाता।

16 श्री जैन सच के योग्य प्रतिनिधि का एक तर्क यह भी था कि 5-11-85 के पत्र द्वारा अप्रार्थी ने श्री यादव की ऋण वितरण करने के अधिकारों का उपयोग बंद कर दिया इसलिए 5-11-85 के उपरान्त तो वह प्रबंधकीय श्रेणी में माना ही नहीं जा सकता। यह सही है कि 5-11-85 के पत्र द्वारा श्री यादव को ऋण प्रदान करने के अधिकारों का उपयोग बन्द करने के आदेश दिये गये थे परन्तु मेरी राय में उक्त आदेश से यह निष्कर्ष नहीं निकलता कि 5-11-85 के उपरान्त श्री यादव प्रबंधक की श्रेणी में नहीं रखे जा सकते हो क्योंकि 5-11-85 के पत्र में यह उल्लेख है कि निरीक्षण के दौरान पाई गई अनियमितताओं पर सुधार किये बिना श्री यादव नये ऋण स्वीकृत नहीं करेंगे तथा इस दौरान अगर कोई ऋण हेतु आवेदन प्राप्त होता है तो उसे अपनी सिफारिशों सहित प्रधान कार्यालय को पठावेंगे। मेरी राय में 5-11-85 का पत्र तो इस उद्देश्य से जारी किया गया था कि निरीक्षण प्रतिवेदन में जो अनियमितताएँ पाई गई थी उनका सुधार करने का प्रयास श्री यादव से किया गया था। तर्क के लिए यह मान भी लिया जाये कि 5-11-85 के पत्र द्वारा ऋण स्वीकृत करने के अधिकार श्री यादव से छीन लिये गये थे तो भी उससे यह निष्कर्ष नहीं निकलता कि वे कर्मचारी की श्रेणी में आ जायेंगे क्योंकि इसके उपरान्त भी श्री यादव को शम्भुपुरा शाखा में अपने अधीन कार्यरत कर्मचारियों के कार्यों पर नियंत्रण का अधिकार जारी था, शाखा में अणकालीन दैनिक वेतन भोगी कर्मचारियों की नियुक्ति का अधिकार भी था और उनके वेतन के भुगतान का भी अधिकार था, उनके अवकाश स्वीकृत करने व शाखा के दैनिक खर्च करने का भी अधिकार प्राप्त था। यह उल्लेखनीय है कि न तो अपने क्लेम में श्री यादव ने दर्ज किया और न ही अपने शपथ पत्र में कि उसने कभी भी शम्भुपुरा शाखा में किसी प्रकार का कनेरीकल कार्य किया हो, रजिस्टर अथवा लेजर में कहीं कोई प्रविष्टि की हो न ही उक्त विषय का कोई प्रलेख प्रामाणिक पर पेश किया यहाँ तक कि नियोजक साक्षियों में भी इस विषय में प्रति परीक्षा में सुझावात्मक प्रश्न नहीं किये। स्वीकृत रूप में श्री यादव के अधीन एक क्लर्क काम कैशियर नियुक्त था जो शाखा के रजिस्टर व रोकड आदि को इंग्रजात करता था। श्री यादव के हस्ताक्षरों से ही शाखा से राशि निकलवाई जा सकती थी व जमा करवाई जा सकती इस विषय में प्रथम एम-8 लगायत एम-14 तथा एम-23 व 24 का उल्लेख किया जा सकता है। अतएव उपरोक्त समस्त कारणों से मेरी राय में श्री यादव धारा 2 (एस) के अन्तर्गत कर्मकार की परिभाषा में नहीं आते हैं, और इन्हें प्रबंधकीय अधिकार ही प्रदत्त थे।

17- जबकि गुणागुण पर भी दोनों पक्षों की प्राविधिक एवं मौखिक साक्ष्य प्रामाणिक पर पेश हो चुकी है इसलिए चाहे श्री यादव का कर्मकार नहीं पाया गया और श्री यादव पर औद्योगिक विवाद अधिनियम के प्रावधान लागू नही होते फिर भी गुणागुण पर भी निर्णय करना आवश्यक

हो जाता है। क्लेम की चरण स 7 में ही प्रार्थी सच ने दर्ज कर दिया था कि श्री यादव के सेवा मुक्ति आदेश दिनांक 10-12-85 में तो यह अंकित किया गया था कि उसकी सेवा मुक्ति उसकी सेवाओं की आवश्यकता नहीं होने के कारण की जाती है तथा उक्त ऐसा सेवा मुक्ति आदेश सिम्पलीसीटर टर्मिनेशन था परन्तु वास्तव में यह एक दण्डनीय आदेश था और दुराचरण पर आधारित था क्योंकि अप्रार्थी ने अपने आदेश क्रमांक 4167 दिनांक 22-11-85 द्वारा बैंक रिकार्ड में हेराफेरी का गभीर आरोप श्री यादव पर लगाया था जिसकी प्रति अर्नैक्सचर-2 पेश की गई है और उक्त आरोप का उत्तर भी श्री यादव ने दिनांक 28-11-85 अर्नैक्सचर-3 द्वारा दे दिया था। अप्रार्थी नियोजक ने जरिये प्रत्युत्तर कहा है कि सेवा मुक्ति आदेश में जो दर्शन किया गया है वही देखा जा सकता है। सेवा मुक्ति आदेश किसी दुराचरण का उल्लेख नहीं किया गया और न ही सेवा मुक्ति से पूर्व कोई आरोप पत्र श्री यादव को दिया गया है तथा उसकी सेवाओं की समाप्ति नियुक्ति आदेश की शर्तों के अनुसार परीक्षा अवधि की एक माह का नोटिस देकर समाप्त भी गई है। अभिप्राय यह है कि क्लेम के प्रत्युत्तर में नियोजक ने यह स्पष्ट अस्वीकार नहीं किया है कि उन्होंने आदेश दिनांक 22-11-85 द्वारा श्री यादव को कारण बताओ नोटिस जारी नहीं किया हो और श्री यादव ने अर्नैक्सचर 3 दिनांक 24-11-85 का जवाब नहीं दिया हो। बहुसंकेतक दोरान नियोजक प्रतिनिधि श्री जैन का तर्क यह था कि चाहे नियोजक ने अर्नैक्सचर-2 कारण बताओ नोटिस जारी किया हो परन्तु तत्पश्चात् न तो श्री यादव को कोई आरोप पत्र जारी दिया गया और न ही जाँच कराना आवश्यक समझा गया और नियुक्ति पत्र की शर्तों के अनुसार एक माह का नोटिस वेतन देकर परीक्षा काल में ही उसकी सेवाएँ समाप्त कर दी गईं। इसलिए यह न्यायालय सेवा मुक्ति आदेश में वर्णित तथ्यों को ही देख सकता है न कि इसके पूर्व में जारी किये गये कारण बताओ नोटिस अर्नैक्सचर-2 का। इस विषय में अनुप जायसवाल बनाम भारत सरकार 1984 (1) एल. एल. एन. 479, नेपालसिंह बनाम उत्तर प्रदेश राज्य 1986 (1) एल. एल. एन. 683, जरनेल सिंह बनाम पंजाब राज्य, 1986 (2) एल. एल. एन. 364, ओम प्रकाश गोयल बनाम एच. पी. टूरिज्म डिपार्टमेंट 1991 (2) एल. एल. एन. 420 पर उपलब्ध उच्चतम न्यायालय के न्याय वृष्णान्तो का तथा चिन्डरैन अर्कडमी बनाम श्रीमति ऊषा 1992 (1) सी. एल. आर. 422 पर उपलब्ध बाम्बे उच्च न्यायालय के न्याय वृष्णान्तो का उल्लेख किया जा सकता है जिनके अनुसार चाहे प्रबंधक ने सिम्पलीसीटर डिस्चार्ज या टर्मिनेशन किया हो, न्यायालय को यह अधिकार दिया है कि वह पूर्व के पीछे होने वाली कार्यवाही तथा आदेश जारी करते हेतु नियोजक की मानवशा का आकलन कर सकता है और अगर वास्तव में दुराचरण के कारण ही नियोजक ने सिम्पलीसीटर टर्मिनेशन आदेश दिया है तो न्यायालय उसे दुराचरण पर आधारित मानते हुए आवश्यक आदेश पारित कर सकता है। मैंने भी विवेचानाधीन विवाद में पारित सेवा मुक्ति आदेश दिनांक 10-12-85 का विश्लेषण किया तो पाया कि 21-11-85 का आदेश क्रमांक 4167 द्वारा अप्रार्थी ने श्री यादव को कारण बताओ नोटिस जारी किया कि सेविंग बैंक अकाउंट नं. 114 में, जो श्री यादव का स्वयं का था, दिनांक 5-8-85 का 30- का चेक जमा किया जिस पर श्री यादव ने कुमारी अनिता खोमला कैशियर-कम-क्लर्क के हस्ताक्षर स्वयं ने कूटरक्षित (फॉर्ज) किया। 2-8-85 के हाजिरी रजिस्टर में भी कुमारी अनिता खोमला को उपस्थिति के लघु हस्ताक्षर भी स्वयं श्री यादव ने कर दिये यहाँ तक कि 30 रुपये का ओ चिक्कटुल किया था उसका मूल फार्म भी नष्ट कर दिया। श्री यादव ने उक्त दुराचरण बाबत तीन विषयों में स्पष्टीकरण चाहा गया था कि क्यों नहीं अनुशासनिक कार्यवाही की जाये। श्री यादव ने 28-11-85 को अर्नैक्सचर 3 उत्तर भी दे दिया था और उसके तुरन्त उपरान्त दिनांक 10-12-85 के आदेश द्वारा श्री यादव की सेवाएँ समाप्त कर दी। परन्तु फिर भी सेवा मुक्ति आदेश में दुराचरण का उल्लेख नहीं किया जिससे यही निष्कर्ष निकलता है कि वास्तव में दुराचरण वा कोई लाइन लगाकर सेवा मुक्ति नहीं की गई है और सेवा मुक्ति आदेश स्टिगमैटिक नहीं है। मात्र इसलिए कि सेवा मुक्ति आदेश पारित करने के पूर्व श्री यादव का कारण बताओ नोटिस जारी

गया और इसका स्पष्टीकरण मांगा गया तथा उक्त कारण बताओं नोटिस में भी वाक्य पर हस्ताक्षर कूट रचित करने और हाजिरी रजिस्टर में लघु हस्ताक्षर कूट रचित करने का उल्लेख कर दिया, इसमें यह निष्कर्ष नहीं निकाला जा सकता कि वास्तव में सेवा मुक्ति आदेश दुराचरण पर ही आधारित हो। रविश कुमार बनाम उत्तर प्रदेश राज्य हैब्स कर्पोरेशन 1988 लैब. आई. सी. 56 पर उपलब्ध उच्चतम न्यायालय के न्याय दृष्टान्त का उल्लेख इस विषय में किया जा सकता है। जिसमें भी तथ्य विवेक नाधीन विवाद के तथ्यों से बहुत कुछ मिलने जुलने थे। श्री रवीन्द्र कुमार अस्थायी इट्टी प्रोबेशन आफीसर थे जिसे फर्जी उत्पादन प्रविष्टियां करने के कारण दुराचरण के आधार पर कारण बताओ नोटिस जारी किया गया था और निलंबित कर दिया था तथा स्पष्टीकरण प्राप्त होने के उपरान्त जांच अधिकारी नियुक्त कर घरेलू जांच प्रारंभ कर दी गई थी। परन्तु तत्पश्चात् जांच के निष्कर्ष की प्रतीक्षा किए बिना ही साधारण आदेश द्वारा उसकी सेवा करने शर्तों के अनुसार एक माह का नोटिस वेतन देकर सेवाएं समाप्त कर दी गई। सेवा मुक्ति आदेश को अपास्त करने हेतु हलाहलबाद उच्च न्यायालय में रिट पेश की गई जहां पर असफल होने पर माननीय उच्चतम न्यायालय में सिविल अपील दायर की गई जिस पर निम्न मत व्यक्त किया गया।

"He was a temporary servant and had no right to the post. It has also not been denied that both under the contract of service as also the Service Rules governing him, the employer had the right to terminate his services by giving him one month's notice. The order under challenge is expressly the order of termination in innocuous terms and does not cast any stigma on the appellant nor does it visit him with any level consequences. It is also not founded on misconduct. In the circumstances the order is not open to challenge."

निर्वाह रूप से अनैक्सचर-2 में वर्ज दुराचरण के बावजूद न तो श्री यादव को कोई आरोप पत्र जारी किया गया और न ही घरेलू जांच करवाई गई इसलिए बिना घरेलू जांच करवाये भी टर्मिनेशन आदेश जारी करना न्यायोचित था।

सिम्पलीसीटर

18. श्री काला, नियोजक के योग्य प्रतिनिधि का तर्क यह था कि श्री यादव परीक्षाधीन थे। नियुक्ति आदेश डब्ल्यू-1 के अनुसार उन्हें 2 वर्ष की परीक्षा पर 22-5-85 को नियुक्त किया गया था। परीक्षा अवधि में श्री यादव का कार्य संतोषजनक नहीं पाया गया इसलिए 12-10-85 को ही उनकी सेवाएं समाप्त कर दी गईं तथा नियोजक का यह अधिकार है कि या तो वह दुराचरण के आधार पर घरेलू जांच कराकर नियमानुसार दुराचरण पर आधारित करते हुए सेवा मुक्ति करे अथवा दुराचरण पर सेवा मुक्ति आधारित नहीं करते हुए बिना जांच कराये ही परीक्षा अवधि समाप्त अपने सेवा नियमों के अनुसार अथवा नियुक्ति पत्र की शर्तों के अनुसार समाप्त कर दे। अपने कथनों के समर्थन में श्री काला ने के. ए. बारोट बनाम गुजरात राज्य 1990 एस. सी. सी. (सप्लीमेंट) 287 के न्याय दृष्टान्त का सहारा लिया है जिसमें श्री बारोट परीक्षा अवधि पर नियुक्त थे, उनका परीक्षा काल 6-6 माह के लिए तीन बार बढ़ाया गया तत्पश्चात् सेवाएं समाप्त कर दी गईं। श्री बारोट का तर्क यह था कि परीक्षा अवधि समाप्त होने के उपरान्त वह स्वतः ही सेवा में स्थाई हो गया, इस पर माननीय उच्चतम न्यायालय ने निम्न मत व्यक्त किया:

"It must be accepted in the facts of this case that though in the absence of a clear order of confirmation a probationer does not get the confirmed status, it is open to the appointing authority to confer a status other than that of confirmed status on the termination of probation period. In the instant case the appellant's status was temporary as indicated in the

order of appointment which stipulated termination with a month's notice. In the event of notice falling short of a month as stipulated at the most appellant would have become entitled to a month's salary in lieu of notice the principle of Section 25-F of the I.D. Act or under Section 5 of the Civil Services (Temporary Service) Rules, 1965 cannot be invoked in the facts of the present case."

विवेचनाधीन विवाद में श्री यादव को भी दो वर्ष की परीक्षा अवधि चल रही थी जिसके दौरान ही नियुक्ति के 6 माह के अंदर ही सेवा शर्तों के अनुसार एक माह का नोटिस वेतन देकर सेवा मुक्त किया गया है। म्यूनिसिपल कॉर्पोरेशन दायपुर बनाम अणोक कुमार मिश्रा 1991 (3) एस. सी. सी. 325 के न्याय दृष्टान्त में भी श्री मिश्रा को सेवा मुक्ति परीक्षा अवधि समाप्त होने के उपरान्त की गई थी। श्री मिश्रा का कथन यह था कि परीक्षा अवधि समाप्त होने के उपरान्त उसे सेवा में स्थाई रक्ख जायेगा क्योंकि परीक्षा अवधि बढ़ाने का आदेश नहीं दिया गया। माननीय उच्चतम न्यायालय का मत था कि:

"Merely expiry of the initial period of probation does not automatically have the effect of being deemed confirmation and the status of a deemed confirmation on the probation. An express order in that regard only confers the status of an approved probationer. Sub-rule (2) read with sub-rule (6) of Rule 8 states that confirmation of the probationer would be made only on successful completion of the probation period and passing of the prescribed examination. It is not the respondent's case that he passed the examination, therefore, he shall be deemed to be continued on probation. Before confirmation the appointing authority is empowered to terminate the service of the probationer by issuing one calendar month's notice in writing and on expiry thereof the services stand terminated without any further notice. In this view the question of conducting an enquiry under the Classification, Control and Appeal rules does not arise."

विवेचनाधीन विवाद पर भी उपरोक्त न्याय दृष्टान्त ज्ञात प्रतिगत लागू होता है। यहां पर भी परीक्षा अवधि समाप्त होने से पहले ही नियुक्ति शर्तों तथा स्थाई आदेशों के अनुसार एक माह का नोटिस वेतन देकर सेवा समाप्त कर दी गई। कश्मीरा मिह बनाम हरियाणा स्टेट इलेक्ट्रिसिटी बोर्ड 1976 लैब. आई. सी. 348 के न्याय दृष्टान्त में पंजाब एवं हरियाणा उच्च न्यायालय के अनुसार:

"In case of the petitioners the terms of employment was that their services were liable to termination by one month's notice.....The notices of discharge from service were in accordance with the conditions of service and not penal. The order of discharge is innocuous in terms and did not cast any stigma on the employees"

उक्त विवाद में श्रमिकों की अस्थायी सेवा एक माह का नोटिस देकर सेवा शर्तों के अनुसार इसलिए समाप्त कर दी गई थी क्योंकि उन्होंने हड़ताल में भाग लिया था जिसे माननीय छुड़ पीठ ने सेवा शर्तों के अनुसार होने से उचित ठहराया। विवेचनाधीन विवाद में तो परीक्षा अवधि के दौरान ही सेवा शर्तों के अनुसार एक माह का नोटिस देकर श्री यादव को हटाया गया है इसलिए उक्त न्याय दृष्टान्त इस विवाद पर भी लागू होता है। गुजरात उच्च न्यायालय ने भी पी. वी. व्यास बनाम गुजरात वाटर सप्लाई 1988 (57) एफ. एस. प्रार. 891 के न्याय दृष्टान्त में परीक्षाधीन अधिकारी के सेवाएं परीक्षा काल बढ़ाने के उपरान्त समाप्त कर दी गईं क्योंकि श्री व्यास की सेवाएं संतोषजनक नहीं थीं। जिस पर माननीय न्यायाधीपति ने निम्न मत व्यक्त किया:

"The order of appointment was that the petitioner was appointed on probation for one year. It does not indicate either expressly or by necessary implication that the period of probation will not be extended or that the petitioner will automatically be confirmed. In view of this the ratio of the decision of Supreme Court (AIR 1972 SC 873) applies on all force and hence the grievance of the petitioner that the period of probation could not have been extended is without any merit. The respondent's were entitled to extend the period of probation and it was rightly extended from time to time and the petitioner continued as probationer till the date of termination because no express order of confirmation was passed at any time. The petitioner services have been rightly terminated leading him on probation on the ground that his work was not found to be satisfactory."

विवेचनाधीन विवाद में निम्नलिखित आदेश में हो यह वर्ज था अपनी दो वर्ष की परीक्षा पर रखा गया है, उक्त परीक्षा अग्रिम समाप्त होने से पूर्व ही सेवा समाप्त की गई है जिसके पीछे नियोजक की मांग थी कि श्री यादव का कार्य संतोषजनक नहीं था हालांकि सेवा मुक्ति आदेश में इस विषय का उल्लेख नहीं किया गया था। उक्त न्यायालय ने भी न्याय भंडारी बनाम राजस्थान राज्य 1991 (1) एन. एल. एन 223 के न्याय दृष्टान्त में परिवर्तित व्यक्ति की उमर का कार्य एवं व्यवहार परीक्षणक नहीं पाने से सेवा मुक्ति को सेवा शर्तों के अनुरूप ही। से न्यायोचित ठहराया। उक्त विवाद में श्री भाटी का नियुक्ति एल. डी. नं. के पद पर अस्थाई रूप में 4-12-75 को की गई थी और परीक्षा अवधि में ही एक माह का नोटिस देकर 15-1-78 को सेवा समाप्त कर दी गई। श्री भाटी का कथन यह था कि सेवा समाप्ति आदेश स्टिगमैटिक है और अनुच्छेद 311 लागू होता है जिस पर माननीय खण्ड पीठ ने निम्न मत व्यक्त किया:

"Hon'ble Supreme Court in State of Orissa vs. Ram Narayan Das AIR 1961 (SC) 177 has considered the order of discharge of police officer on probation and held that in case of a probationer observation like unsatisfactory work and conduct would not amount stigma. The order of termination of the petitioner does not cast any stigma. When the work of a petitioner was not found satisfactory, so his services were terminated. Such an observation in the order of termination cannot be said to be an aspersion or stigma on the efficiency or otherwise of the petitioner and Art. 311 would not be attracted."

विवेचनाधीन विवाद में भी उक्त न्याय दृष्टान्त ज्ञात प्रतिष्ठित लागू होता है यहाँ पर भी परीक्षा अवधि के दौरान ही श्री यादव की सेवा समाप्त की गई थी चाहे सेवा समाप्ति के पीछे नियोजक की मानवना यह थी कि श्री यादव का कार्य संतोषजनक नहीं था परन्तु फिर भी सेवा मुक्ति आदेश में उक्त विषय का उल्लेख नहीं करते हुए सेवा समाप्त की गई है। मोहनसिंह बनाम राजस्थान विध्वंसिधालय पी. डी. सिविल रिट पिटीशन नं. 1705/87 दिनांक निर्णय 14-9-87 के कोर्टो प्रति पेश हुई है जिसमें मोहनसिंह की नियुक्ति सिविल रिटि आफिसर के पद पर 24-8-86 को तीन माह के लिए का गई पर जिसे 6 माह की अवधि के लिए 4-8-87 तक बढ़ाया गया परन्तु 24-8-87 की ही सेवा मुक्ति कर दिया क्योंकि सेवाओं की आवश्यकता नहीं थी। सेवा समाप्ति के साथ ही एक माह का नोटिस वेतन भी दे दिया गया। नियोजक का कथन यह था कि श्री मोहनसिंह का कार्य संतोषजनक नहीं था। उसे अनेकों बार कार्य सुधारने बाबत कहा गया परन्तु कोई प्रगति नहीं हुई फलस्वरूप सेवा नियमों के अनुसार सेवा समाप्त कर दी गई। श्री मोहनसिंह का कथन यह था कि सेवा मुक्ति आदेश उचित ही नहीं था क्योंकि घरेलू जाच कराये बिना ही पारित किया गया था जबकि नियोजक का कथन यह था कि अस्थाई श्रमिक की सेवा मुक्ति सेवा शर्तों के अनुसार एक माह का नोटिस वेतन देकर समाप्त की गई है। उपरोक्त तथ्यों और परिस्थितियों के अनुसार चाहे

माहनसिंह की सेवा मुक्ति सेवा शर्तों के अनुसार की गई थी परन्तु चूंकि उसका सेवा अवधि 240 दिवस से अधिक हो गई थी इसलिए उसे धारा 25-एक के प्रावधानों का लाभ देना न्यायोचित था जो नहीं दिया गया है और दुराचरण बाबत घरेलू जाच नहीं कराई गई इस लिए चाहे सेवा मुक्ति आदेश अनापेक्षित था परन्तु फिर भी दुराचरण पर आधारित मानते हुए सेवा मुक्ति आदेश को दण्ड स्वरूप मानते हुए अस्वीकार किया गया लेकिन फिर भी मोहनसिंह की सेवा में पुनर्नियोजन का लाभ नहीं दिया गया जबकि पंद्रहवां साल का जो वेतन अवधि अवधि 24-8-87 तक का वेतन ही दिलाया गया। माननीय राजस्थान उच्च न्यायालय की खण्ड पीठ का उपरोक्त न्याय दृष्टान्त ज्ञात प्रतिष्ठित विवेचनाधीन विवाद पर लागू नहीं होता है क्योंकि विवेचनाधीन विवाद में श्री यादव की 240 दिवस की सेवा अवधि पूरा नहीं हुई थी और परिणत ताल में ही उक्त न्यायालय आदेश द्वारा सेवा मुक्ति किया गया था इन परिस्थितियों में चाहे सेवा मुक्ति आदेश के पीछे अनापेक्षित—21-11-85 का कारण बताओ नोटिस ही रखा हो, अधिकांश से अधिक यह श्रमिकों के परीक्षा काय का वेतन ही प्राप्त कर सकता था।

19. पनू जयसवाल बनाम भारत सरकार 1981 (1) एम०एस० 258 के न्याय दृष्टान्त में माननीय उच्चतम न्यायालय के परन्तु भी जो विवाद था उसमें परीक्षा अवधि के दौरान ही न्यायालय सेवा मुक्ति की गई थी परन्तु उक्त आदेश के पूर्व श्री जयसवाल व अन्य व्यक्तियों को भी कारण बताओ नोटिस जारी किये गये थे और उनके स्पष्टीकरण प्राप्त होने के पश्चात् श्री जयसवाल की तो सेवा समाप्त कर दी गई और अन्य व्यक्तियों को पेना में बनाये रखा। उक्त मामले में संविधान का अनुच्छेद 311(2) लागू पाया गया था और उक्त विशेष परिस्थितियों में श्री जयसवाल को संवेतन सेवा में नियोजित किया गया। विवेचनाधीन विवाद में न तो अनुच्छेद 311(2) लागू होता है और न ही श्री यादव के समान अन्य किसी जाति प्रबन्धन के साथ दोहरा मापकण्य अपनाया गया है।

20. एम०एस० हाटवाल बनाम हिन्दुस्तान मोटर्स 1976 ए०सी० ए०जे० 262 के न्याय दृष्टान्त में भी साधारण सेवा मुक्ति की गई थी परन्तु वास्तव में यह दुराचरण पर आधारित थी और माननीय न्यायालय के मतानुसार नियोजक द्वारा पारित किये गये आदेश सैदा-फाई होने से चाहे वह सेवा शर्तों के अनुसार पारित किये गये थे, कायम नहीं रखा जा सकता। परन्तु फिर भी श्री हाटवाल को पुनर्नियोजित करने की बजाय उसे कुछ राशि ही बिताई गई। अतः उपरोक्त समस्त कारणों से श्री एम०सी० जैन मध के प्रतिनिधि द्वारा प्रस्तुत किये गये न्याय दृष्टान्त एवं तर्क विवेचनाधीन विवाद के तथ्यों और परिस्थितियों के मदर्भ में लागू नहीं होते हैं।

21. श्री जैन योग्य प्रतिनिधि का एक तर्क यह था कि माननीय उच्चतम न्यायालय ने एम०के० अग्रवाल बनाम ग्रामीण बैंक 1988 एम०सी०सी० (एल० एंड एम०) 347 के न्याय दृष्टान्त द्वारा गुडगांव ग्रामीण बैंक स्टाफ सचिव रंगूनेशन की धारा 10(2)(ए) को असंवैधानिक घोषित करते हुए अपास्त कर दिया जिसके अन्तर्गत ही सेवा मुक्ति के अधिकार प्रबन्धकों को दिये गये हैं। विवेचनाधीन विवाद में भी बुरी चित्तीडगढ़ क्षेत्रीय ग्रामीण बैंक कर्मचारी सेवा नियम 1985 पेश किये गये हैं उसमें भी गुडगांव ग्रामीण बैंक जैसे ही प्रावधान धारा 10(2)(ए) में थे इसलिए भी श्री यादव की सेवा मुक्ति कायम नहीं रखी जा सकती। मैं माननीय उच्चतम न्यायालय के उपरोक्त न्याय दृष्टान्त में गौर महसूस हूँ परन्तु मेरी राय में इसमें श्री यादव को कोई लाभ नहीं दिलाया जा सकता क्योंकि न तो केस में ही उक्त तथ्यों का उल्लेख किया गया है और न ही इस बाबत किसी प्रकार की साक्ष्य पेश हुई है इसलिए नियोजक प्रतिनिधि इस विषय में अपने अभ्यावेदन एवं तर्क प्रस्तुत नहीं कर पाये। यह मान भी लिया जाये कि उच्चतम न्यायालय के उपरोक्त न्याय दृष्टान्त के अनुसार बुरी चित्तीडगढ़ ग्रामीण क्षेत्रीय बैंक के सेवा नियम की धारा 10(2) असंवैधानिक है तो भी अक्टूबर-4 दिनांक 10-12-85 का जो आदेश अपाधी द्वारा पारित किया गया है वह धारा

10(2) के अन्तर्गत जारी नहीं किया तथा बल्कि धारा 8(3)(क) के अन्तर्गत जारी किया गया है जिसके अनुसार ही परीक्षाधीन व्यक्तियों को परीक्षा काल में एक माह का नोटिस देकर या उसके बबले एक माह का वेतन देकर सेवा समाप्त की जा सकती है। धारा 10(2) के अन्तर्गत तो स्पष्ट कर्मचारियों को सेवा मुक्ति का ही प्रावधान है।

22. श्री जैन, योग्य प्रतिनिधि संघ का एक तर्क यह भी था कि बैंक सेवा नियमों के अन्तर्गत 3 माह का नोटिस देकर अथवा नोटिस के एवज में तीन माह का वेतन देकर सेवा मुक्ति का प्रावधान है जबकि श्री यादव को एक माह का ही नोटिस वेतन दिया गया है। मेरी राय में उक्त तर्क भी तथ्यों पर आधारित नहीं है क्योंकि धारा 10(2)(क)(1) के अन्तर्गत तीन माह का नोटिस देने का प्रावधान तो स्पष्ट श्रमिकों के लिए है। परीक्षाधीन श्रमिकों के लिए तो धारा 8(3)(क) ही लागू होती है जिसके अनुसार एक माह का नोटिस वेतन दिया गया था।

23. श्री जैन का एक कथन यह भी था कि धारा 25-जी व एच का उल्लंघन किया है क्योंकि सेवा मुक्ति करते समय श्री यादव से कनिष्ठ व्यक्ति कार्यरत थे और सेवा मुक्ति के उपरान्त नये शाखा प्रबंधकों की भी नियुक्ति की गई है। यह उल्लेखनीय है कि तत्तु क्लेम में उन व्यक्तियों के नाम का उल्लेख है जो सेवा समाप्ति के समय शाखा प्रबंधक के पद पर थे और श्री यादव से कनिष्ठ थे और न ही श्री यादव ने अपने शपथ पत्र में उक्त तथ्यों का उल्लेख किया यहां तक कि नियोजन साथी सर्वश्री सिधानियां व अनिल कुमार शर्मा से इस विषय में प्रति परीक्षा में सुझावात्मक प्रश्न किये। श्री सिधानियां ने प्रति परीक्षा में इतना ही कहा है कि कनिष्ठतम व्यक्ति को निकाबना जकरी नहीं था। मेरी राय में संघ के प्रतिनिधि ने यह अपेक्षा थी कि वह यह सिद्ध करता कि सेवा मुक्ति के समय ही यादव से कनिष्ठ व्यक्ति शाखा प्रबंधक के पद पर नियोजित था और सेवा मुक्ति के उपरान्त भी शाखा प्रबंधक के पद पर किन नये व्यक्तियों को नियोजित किया गया था जिसके अभाव में यह तर्क भी चलने योग्य नहीं है। यह उल्लेखनीय है कि मामले के अंतिम स्टेज पर 3-1-91 को संघ के प्रतिनिधि ने एक अर्जी प्रस्तुत कर कुछ प्रलेख पेश करने की अनुमति माही थी जो अनुमति 7-3-91 को दी गई थी। इन प्रलेखों में 30-6-89 में कार्यरत अधिकारियों को अंतिम बरिष्ठता सूची पेश की है जिसकी क्रम सं० 42 सगावन 46 पर 22-5-85 की नियुक्ति 5 शाखा प्रबंधकों के नाम का उल्लेख है। परन्तु इससे यह निष्कर्ष नहीं निकलता कि उनमें से कौनसा या कोई शाखा प्रबंधक भी यादव से कनिष्ठ था। इस सूची ने यह भी प्रकट होता है कि वर्ष 1986 में नये शाखा प्रबंधकों की भी भर्ती कां गई थी। यह उल्लेखनीय है कि शाखा प्रबंधकों की भर्ती करने से पूर्व अपरार्थी के सेवा नियमों के अनुसार शिक्षित परीक्षा एवं साक्षात्कार होता है जिनमें सफल रहने पर ही शाखा प्रबंधक का चयन होता है। इसलिए जाहें सेवा मुक्ति के उपरान्त वर्ष 1986 में नये शाखा प्रबंधकों की भर्ती की गई हो उससे धारा 25-एच के प्रावधानों का उल्लंघन नहीं होता है।

24. श्री काला नियोजक प्रतिनिधि ने उच्चतम न्यायालय के नाथ वृष्टान्त राम किशन जेखा बनाम बूदी विलोडगढ़ क्षेत्रीय ग्रामीण बैंक सिविल अपील सं० 1556/88 निर्णय दिनांक 23-1-92 की भी फोटो प्रति पेश की है जिसके तथ्य और परिस्थितियां तो विवेचनाधीन विवाद पर शत प्रतिशत लागू होते हैं क्योंकि इसमें भी अपीलार्थी श्री राम किशन बैरवा की नियुक्ति शाखा प्रबंधक के पद पर 2 वर्षों को परीक्षा पर की गई थी और उक्त परीक्षा अवधि के दौरान ही नियोजक ने श्री बैरवा को उसके द्वारा की गई गलतियों बाबत सतर्क किया था परन्तु फिर भी श्री बैरवा में सुधार नहीं पाया तो उसे कारण बताओ नोटिस जारी किया गया जिसका जवाब भी श्री बैरवा ने दे दिया परन्तु फिर भी नियुक्ति आदेश की शर्तों तथा बैंक के रेगुलेशन 8(3)(4) के अनुसार साधारण आदेश द्वारा एक माह का वेतन देने हुए सेवा मुक्त कर दिया। उक्त आदेश से व्यथित होकर भी बैरवा ने राजस्थान उच्च न्यायालय में

रिट दायर की जहां असफल रहने पर खण्ड पीठ में भी अपील की जहां पर भी कोई अनुतोष नहीं मिला तो माननीय उच्चतम न्यायालय में विशेष अनुमति लेकर अपील दायर की जिस पर निम्न मत व्यक्त किया गया :

"What weighed with the High Court was that prior to the issuance of the notice dated 7-10-86 there was a course of conduct reflective from the correspondence between the bank and appellant suggesting that the appellant was not coming up to the expectations of the bank in the performance of his duties. That is the reason why he was time and again cautioned and duties. It has to be borne in mind that the post of have been more vigilant in the performance of his duties. It has to be borne in mind that the post of the appellant was that of trust. He was entrusted with a fair amount of discretion towards disbursement of loans and money handling. This function of the appellant brooked not laxity and had to remain in a fiscal discipline more so when he was meaning a branch independently. His attention was invited to a transaction suggestive of loss to the bank. One such instance was that he signed a voucher relating to a transaction which was not reflected in the ledger. On this basis the appointing authority could arrive at a stage to stop probating the appellant any further and entertain the view that the appellant was not fit for confirmation on the post even though such not fit for confirmation on the post even though such view of unfitness was not expressed in so many words. Rather the order of discharge mentions that in terms of the letter of appointment, without assigning any reason, the appellant stands discharged. We have to see the substance of the matter and not bare of words. We are on these circumstances, satisfied that there was no vindictiveness involving the discharge of the appellant. The authorities of the bank took the action as a protective measure to keep their services trim and in good shape."

25. विवेचनाधीन विवाद में भी अनुसूचक-2 21-11-85 के नोटिस द्वारा श्री यादव को सूचित किया गया कि उसने 5-8-85 को स्वयं के बचत खाता सं० 114 में 30 रुपये की राशि घनाधिकृत रूप से निकाल जिस पर खूब ने ही कुमारी धनीना खोमला कश्मिर-कम-कलक के हस्ताक्षर कर लिये और उक्त बाऊबर भी नष्ट कर दिया तथा 2 अगस्त 1985 को हाजिरी रजिस्टर में कुमारी धनीना खोमला के सखु हस्ताक्षर भी स्वयं ने ही कर दिये। अधिप्राय यह है कि श्री यादव के स्पष्टीकरण के पश्चात् नियोजक इस निष्कर्ष पर पहुंचे कि बैंक के शाखा प्रबंधक जैसे पद पर श्री यादव का जारी रखना उचित नहीं है जिसने परीक्षा अवधि के दौरान ही बैंक के रिकार्ड एवं बाऊबर वगैरह में फर्जकारी करना प्रारम्भ कर दिया था। यह उल्लेखनीय है कि न तो क्लेम में ही यह उर्ज किया गया कि श्री यादव को अपरार्थी ने किनो पूर्वाग्रह या दूषित मस्तक से सेवा मुक्ति किया हो न हो श्री यादव ने अपने शपथ पत्र में उक्त तथ्यों का उल्लेख किया बल्कि इसके विपरीत श्री यादव प्रति परीक्षा में स्वीकार करते हैं कि उनका और बैरवा का ग्रामीण कोई झगड़ा नहीं था। इन परिस्थितियों में माननीय उच्चतम न्यायालय के उपरोक्त न्याय वृष्टान्त के प्रानुसार श्री मेरो राय में श्री यादव का कोई अनुतोष नहीं दिलाया जा सकता।

26. अन्य किसी प्रकार का तर्क किसी भी पक्षकार के प्रतिनिधि ने बहुत के दौरान मेरे मक्ष प्रस्तुत नहीं किया।

27. तथ्यों और विधि के उपरोक्त मसल विचारणीयतांत इस निर्णय का अधिनिर्णय निम्न प्रकार से किया जाता है :

"श्री राम दयान यादव, शाखा प्रबंधक शम्भूपुरा की 10-12-85 से की गई सेवा मुक्ति उचित एवं वैध है और यह किसी अनुतोष का अधिकारी नहीं है। पक्षकारगन् खर्च अपना अपन बर्बाद करेंगे।"

28 अर्वाइ की प्रति केन्द्र राज्य सरकार के अन्तर्गत धारा (17) (अधिनियम के नियमानुसार प्रकाशन हेतु पठाई जावे।

जगत सिंह, पीठामीन अधिकारी

नई दिल्ली, 28 जुलाई, 92

का०अ० 2205 —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार फूड कारपोरेशन आफ इंडिया के प्रबन्धतंत्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच, अनवद्य में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पक्षपट को प्रकाशित करती है, जो केन्द्रीय सरकार का 27-7 92 को प्राप्त हुआ था।

[संख्या एल-42012/133/86-डी-11 (बी)]

सुभाष चन्द्र शर्मा, डेस्क अधिकारी

New Delhi, the 28th July, 1992

S.O. 2205—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Food Corporation of India and their workmen, which was received by the Central Government on 27-7-92

[No L-42012/133/86-D III(B)]

S. C. SHARMA, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

PRESENT.

Sri G Krishna Rao, B A, B L, Industrial Tribunal.

Fourteenth Day of July Nineteen Hundred Ninety Two
Industrial Dispute No 50 of 1988

BETWEEN

The Workmen of Food Corporation of India, Kurnool (A.P.) Petitioner

AND

The Management of Food Corporation of India, Kurnool (A.P.) Respondent.

This case is coming for final hearing before me in the presence of M/s G Bikshapathi, G. Vidya Sagar, V. Vishwanatham, N. Vinesh Raj and K. V. V. Bhasker, Advocates for the Petitioner-workmen and Sri K. Satyanarayana Rao, Advocate for the Respondent-Management and upon perusing the material papers on record and having stood over for consideration till this day, the Court passed the following

AWARD

This is a reference made by the Government of India, Ministry of Labour, by its Order No L 42012/133/86-D II (B) dated 29-4-1988 for adjudication of the dispute between the Management of Food Corporation of India, Kurnool and their workmen setting forth the point for adjudication appended thereto as follows :

"Whether the action of the management of Food Corporation of India, Kurnool (A.P.) in terminating the services of Sri L. Mohammed Basha Ex-Watchman is justified? If not, to what relief, the workman concerned is entitled to?"

The said reference was registered as ID No 50 of 1988 on the file of this Tribunal. After receiving the notices issued by this Tribunal, both parties put in their appearance and the Petitioner filed claim statement on 19-1-1988 and the Respondent filed counter on 7-12-1988

2 The averments of the claim statement filed by the Petitioner read as follows :

It is respectfully submitted that the Petitioner was appointed as Watchman on daily wage basis. The Food Corporation of India is engaged in procurement of paddy. During the year 1973-77, there was heavy procurement programme consequent to the bumper crops in Andhra Pradesh. However, the recruitment in all categories of posts of Watchman, Sweeper, Assistant (Depot), etc., was done on daily rate basis. Having realised that the appointing of employees on rate basis is not proper, the Food Corporation of India has issued instructions to regularise the services of the daily rated workman from 8-1-1976 onwards. In respect of employees who were terminated from service, an amendment was introduced to the Food Corporation of India Employees Service Regulations in 1976 to the effect that the employees who were recruited on daily rate basis should also be considered for appointment against direct recruitment along with the candidates sponsored by the Employment Exchange. The relevant Gazette Notification is extracted below :

"Provided further such of the employees who were recruited on daily rate basis for periods of less than 3 months on purely temporary basis and whose services have been retained after allowing periodical breaks shall also be eligible to be considered for appointment against the direct recruitment along with candidates sponsored by Employment Exchange"

It is submitted that the Petitioner worked as Watchman from 13-2-1976 to 2-5-1977 and his services were disengaged from 3-5-1977 without any notice or any valid reasons. Ever since the disengagement, the Petitioner has been making representations personally and also through Union to consider his candidature for regular appointment in pursuance of the amendment as stated supra. But there was no response. Therefore, the Petitioner was constrained to move the conciliation proceedings before the Assistant Labour Commissioner (Central), Hyderabad. However, there was no meeting point between the parties and the conciliation ended in failure. The Conciliation Officer sent a failure report to the Government of India. The Government of India on erroneous consideration of the facts on law, rejected the case for reference to this Hon'ble Tribunal. Aggrieved by the decision of the Government of India the Petitioner filed Writ Petition No 17056/1987. The Hon'ble High Court of Andhra Pradesh, by an Order dated 17-6-1988, allowed the Writ Petition and directed the Government of India to refer the matter for adjudication by this Hon'ble Tribunal. Aggrieved by the orders of the learned single Judge, the Management has filed Writ Appeal and the same was dismissed by the Hon'ble Court. In pursuance of the orders of the High Court of Andhra Pradesh, the present reference is made to this Hon'ble Tribunal. It is submitted that the impugned order of disengagement is illegal and arbitrary. The Petitioner made several representations but the management have not considered the same. It is submitted that the termination is illegal, arbitrary and unwarranted, whereas the workman appointed subsequent to the Petitioner's appointment were continued but the services of the Petitioner were terminated. The alleged action is also violative of Section 25-H of the Industrial Disputes Act. The Respondent has not maintained the seniority list and has not followed the procedure for retrenchment under Section 25-G of the Industrial Disputes Act. Ever since the date of termination the Petitioner is unemployed and could not secure any alternative employment in spite of his best efforts. The Petitioner

facing severe financial difficulties due to unemployment. There are no latches on the part of the Petitioner ever since the disengagement in May, 1977. The Petitioner has been making several representations to the Management. His candidature was also not considered for recruitment. It is therefore prayed that the Hon'ble Court may be pleased to hold that the disengagement of the Petitioner with effect from 3-5-1977 as illegal, arbitrary and unwarranted and consequently pass an award directing the Respondent Management to reinstate the Petitioner into service with all consequential benefits.

3. The averments of the counter filed by the Respondent read as follows:

It is submitted that the Petitioner was engaged as Daily Rated Watchman during the period from 13-2-1976 to 4-5-1977 depending upon the exigency of work. The Petitioner did not work continuously for 240 days. The provision of Section 25(F) of the Industrial Disputes Act does not apply to the present case. The non-engagement of the Petitioner is legal, valid and according to law. The Petitioner's services were engaged only on Casual basis depending on the exigencies of work and as such the Petitioner is not entitled for reinstatement/regular appointment in the F.C.I. That apart the Petitioner name was not sponsored by Employment Exchange for considering for regular employment at that time. The Petitioner did not raise any dispute till 1987 and as such there is a delay of more than 9 years in raising the dispute. It is totally incorrect to say that since 1976 the Petitioner made several representations. In fact since 1976 till 1986 the Petitioner never made any representation. The instructions issued in Head-Quarters Gazette notification does not apply to the Petitioner's case. The above dispute suffers from latches, and it cannot be treated as an Industrial Dispute. In view of what has been stated above the Petitioner herein is not entitled to any relief and this Hon'ble Court may be pleased to dismiss the petition.

4. W.W. 1 was examined for the Petitioner and the Petitioner's side was closed. Exs. W1 to W6 were marked for the Petitioner. M.W. 1 was examined for the Respondent and the Respondent's side was closed. No document was marked for the Respondent.

5. The point for adjudication is whether the action of the Management of Food Corporation of India, Kurnool (A.P.) in terminating the services of Sri L. Mohammed Basha, Ex-Watchman is justified? If not, to what relief, the workman concerned is entitled to?

6. POINT:—The admitted facts of the case are that the Petitioner was appointed as Watchman on daily wage basis from 13-2-1976 and he worked in the Respondent Corporation till 2-5-1977 with intermittent breaks and the services of the Petitioner were being terminated and he was being re-appointed and finally he was terminated from service from 3-5-1977. The case of the Petitioner was that inspite of the repeated requests, the Respondent-Corporation did not reinstate him after 2-5-1977 and therefore in 1985 he resorted to the conciliation proceedings, that the conciliation failed and that the Petitioner worked for more than 240 days in the year immediately prior to the date he was removed from service without complying with the mandatory provisions of Section 25-F of the I.D. Act and therefore he is entitled to be reinstated into service.

7. The contention of the Respondent was that the Petitioner did not work for 240 days continuously and therefore the provisions of Section 25-F of the I.D. Act are not applicable to this case and the Petitioner is not entitled for reinstatement in this case. The question that is to be decided is whether the Petitioner worked for more than 240 days, for him to claim that his removal from service amounts to retrenchment and that the retrenchment without complying with the provisions of Section 25-F of the I.D. Act is illegal and therefore he is entitled to be reinstated. During the course of cross examination M.W. 1 stated that the Petitioner worked in the Respondent-Corporation from 13-2-1976 to 4-5-1977 with break of one or two days in

every month of his service, though he denied the suggestion that the Petitioner worked for 240 days continuously within the period of 12 months immediately prior to the date of his dismissal from service. It is clear from the above extracted portion of the evidence of M.W. 1 that the Petitioner worked for about one year three months continuously with breaks of one or two days in every month of his service which is nothing but artificial breaks which leads to the inevitable inferences that the Petitioner worked continuously for more than 240 days in view of the evidence of M.W. 1, when he categorically deposed that the Petitioner worked in the Respondent-Corporation from 13-2-1976 to 4-5-1977 with breaks of one or two days in every month of his service. So it cannot but be held that the Petitioner worked continuously for more than 240 days within the period of 12 months immediately prior to the date of his dismissal from service. In such a case the mandatory provisions of Section 25-F of the I.D. Act would come into play, as the removal of the Petitioner from service amounts to retrenchment as defined in Section 2(oo) of the I.D. Act and the Respondent-Corporation is bound to issue one month's notice or pay the wages of one month in lieu of not issuing one month's notice and also the Respondent has to pay retrenchment compensation, as contemplated under Section 25-F of the I.D. Act. It is admitted by M.W. 1 that at the time of dismissing the Petitioner from service, one month's notice was not given to him, nor he was paid one month's salary in lieu of not issuing one month's notice and that the Petitioner was not paid retrenchment compensation at that time. So it is clear from the evidence brought on record that the Petitioner worked continuously for more than 240 days within the period of 12 months immediately prior to date of his removal from service and that the Respondent did not comply with the mandatory provisions of Section 25-F of the I.D. Act, before retrenching the Petitioner from service. So it is clear from the evidence brought on record that the Respondent-Corporation did not comply with the mandatory provisions of Section 25-F of the I.D. Act in not paying the retrenchment compensation.

8. It is contended by the learned counsel for the Respondent that as against the judgement in W.A. No 174/88 the Respondent Corporation filed SPL. No. 5178-79/90 on the file of the Supreme Court of India and that the order in the said Civil Appeals was made by the Supreme Court of India on 31-10-1990 and that as per the said Order, the Government of India has to give an opportunity of being heard to both parties before referring the matter to this Tribunal and that the Government of India did not give any opportunity of being heard to the Respondent-Corporation and that therefore the reference in the present case is invalid under law. As seen from the counter filed by the Respondent-Corporation, this plea was not taken and raised in the counter. There is no evidence brought on record to show that the Government of India did not give an opportunity of being heard to both the parties before referring the matter to this Tribunal. On the other hand it is to be noted that the copy of the Order of the Supreme Court of India in Civil Appeal No. 5178-79/90 is not filed before this Tribunal by the Respondent-Corporation. It is also to be noted that the Order of the Supreme Court in Civil Appeal No. 5178-79/90 was passed long subsequent to the date of the reference i.e. 29-4-1988 made by the Government of India, Ministry of Labour. So the contention raised by the learned counsel for the Respondent in this regard is of no avail to the Respondent-Corporation. It is in the evidence of M.W. 1 that after the judgement of the High Court in the Writ Petition, the Government of India did not give an opportunity of being heard to the Respondent-Corporation before referring the dispute to this Tribunal. It is to be noted that M.W. 1 deposed that he has been working as Assistant Manager in the Respondent-Corporation since 1958 and that has been working at Kurnool since June 1990. Admittedly the matter was referred by the Government of India, Ministry of Labour, by its Order dated 29-4-1988 by which time M.W. 1 was not working in Kurnool office and so it cannot be said that M.W. 1 has got personal knowledge whether Government of India has given an opportunity of being heard or not to the Respondent Corporation before referring the matter to this Tribunal. No documentary evidence is filed for M.W. 1 to say that he is speaking from out of the record available as he was not having personal

knowledge of the matter in respect of things that have happened prior to June, 1990 in this case. So the statement of M.W. 1 that after the judgement of the High Court in W.P. No. 17056/87 the Government of India did not give opportunity of being heard to the Respondent before referring the dispute to this Tribunal and carry any weight. Therefore I am of opinion that the contention raised by the learned counsel for the Respondent in this regard is of no help to the Respondent Corporation. In view of my discussion, I am of opinion that the Petitioner is entitled for the relief of reinstatement with continuity of service, but without back wages under the facts and circumstances of the case and in view of the admission made by the Petitioner in his evidence as W.W. 1 that he may be reinstated without back wages. Hence I answer the point accordingly.

9. In the result an Award is passed directing the Respondent-Corporation to reinstate the petitioner into service with continuity of service, but without back wages. The Respondent-Corporation is further directed to reinstate the Petitioner within one month from the date of the publication of this award failing which the Petitioner is entitled to recover the wages from the date of publication of this Award. There will be no order as to costs under the facts and circumstances of the case.

G. KRISHNA RAO, Industrial Tribunal

Appendix of Evidence

Witness examined for
the Workmen.

W.W. 1 L. Mohammed Basha

Witnesses examined for the
Management.

M.W. 1 F. J. Challa Dorai.

Documents marked for the Workman

- Ex. W1—Termination order dt. 11-5-76 issued to L. Mohammed Basha and five others by the District Manager, F.C.I., Kurnool.
- Ex. W2—Termination order dt. 5-5-77 issued to L. Mohammed Basha and five others by the District Manager, F.C.I. Kurnool.
- Ex. W-3—Representation dt. 3-1-78 of L. Mohammed Basha to the Sr. Regional Manager, F.C.I., Hyderabad with regard to regularisation of appointment.
- Ex. W4—Representation dt. 24-12-85 of L. Mohammed Basha to the Asst. Labour Commissioner (C) Hyderguda, Hyderabad, with regard to illegal termination of service.
- Ex. W5—Minutes of conciliation proceedings held on 17-7-86.
- Ex. W6—Failure of conciliation report dt. 1-10-86.

Documents marked for the Management

NIL

Sd/- Industrial Tribunal

नई दिल्ली, 28 जुलाई, 1992

का.अ. 2206 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार फूड कॉर्पोरेशन ऑफ इंडिया के प्रबन्धन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-7-92 को प्राप्त हुआ था।

[संख्या एन-42012/134/86-डी-II(बी)]

मुशाफ चन्द्र शर्मा, ईस्क अधिकारी

New Delhi, the 28th July, 1992

S.O. 2206.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Hyderabad, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Food Corporation of India and their workmen, which was received by the Central Government on 27-7-1992.

[No. L-42012/134/86-D. II(B)]

S. C. SHARMA, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

PRESENT :

Shri G. Krishna Rao, B. A. B. L., Industrial Tribunal.
FOURTEENTH DAY OF JULY NINETEEN HUNDRED
NINETY TWO

INDUSTRIAL DISPUTE NO. 49 OF 1988.

BETWEEN :

The Workmen of Food Corporation of India, Kurnool
(A. P.) ...PETITIONER

AND

The Management of Food Corporation of India, Kurnool
(A.P.) ...RESPONDENT

This case is coming for final hearing before me in the presence of M/s. G. Bikshapathi, G. Vidya Sagar, V. Vishwanath, N. Vinesh, Raj and K. V. Bhasker, Advocate for the Petitioner-workmen and Shri K. Satyanarayana Rao, Advocate for the Respondent-Management and upon perusing the material papers on record and having stood over for consideration till this day, the Court Passed the following.

AWARD :

This is a reference made by the Government of India, Ministry of Labour, by its Order No. L-42012/134 86-D. II(B), dated 29-4-1988 for adjudication of the dispute between the Management of Food Corporation of India, Kurnool and their workmen setting forth the point for adjudication appended thereto as follows :

"Whether the action of the management of Food Corporation of India, Kurnool (A. P.) in terminating the services of Shri M. Shankar Nath, Ex-Watchman is justified? If not, to what relief, the workman concerned is entitled to?"

The said reference was registered as I. D. No. 49 of 1988 on the file of this Tribunal. After receiving the notices issued by this Tribunal, both parties put in their appearance, and the Petitioner filed claim statement on 1-9-1988 and the Respondent filed counter on 7-12-1988.

2. The averments of the claim statement filed by the Petitioner read as follows :

It is respectfully submitted that the Petitioner was appointed as Watchman on daily wage basis. The Food Corporation of India is engaged in procurement of Paddy. During the years 1972-77 there was heavy procurement programme consequent to the bumper crops in Andhra Pradesh. However, the recruitment in all categories of posts of Watchman, Sweepers, Assistant (Depot) etc., was done on daily rate basis. Having realised that the appointing of employees on daily rate basis is not proper, the Food Corporation of India has issued instructions to regularise the services of the daily rated workman from 8-1-1976 onwards. In respect of employees who were terminated from service, an amendment was

introduced to the Food Corporation of India Employees Service Regulations in 1976 to the effect that the employees who were recruited on daily rate basis should also be considered for appointment against direct recruitment along with the candidates sponsored by the Employment Exchange. The relevant Gazette Notification is extracted below :

"Provided further such of the employees who were recruited on daily rate basis for periods of less than 3 months on purely temporary basis and whose services have been retained after allowing periodical breaks shall also be eligible to be considered for appointment against the direct recruitment along with candidates sponsored by Employment Exchange."

It is submitted that the Petitioner worked as Watchman from 13-4-1976 to 25-4-1977 and his services were disengaged from 26-4-1977 without any notice or any valid reasons. Ever since the disengagement, the Petitioner has been making representations personally and also through Union to consider him candidature for regular appointment in pursuance of the amendment as stated supra. But there was no response. Therefore, the Petitioner was constrained to move the conciliation proceedings before the Assistant Labour Commissioner (Central Hyderabad). However, there was no meeting point between the parties and the conciliation ended in failure. The Conciliation Officer sent a failure report to the Government of India. The Government of India on erroneous consideration of the facts on law. Rejected the case for reference to this Hon'ble Tribunal. Aggrieved by the decision of the Government of India, the petitioner filed Writ Petition No. 17018/1987. The Hon'ble High Court of Andhra Pradesh, by the Order dated 3-2-1988, allowed the Writ Petition and directed the Government of India to refer the matter for adjudication by this Hon'ble Tribunal. Aggrieved by the orders of the learned single Judge, the Management has filed Writ Appeal No. 917/1988 and the same was dismissed by an order dated 23-6-1988. In pursuance of the orders of the High Court of Andhra Pradesh, the present reference is made to this Hon'ble Tribunal. It is submitted that the impugned order of disengagement is illegal and arbitrary. The Petitioner made several representations but the Management have not considered the same. It is submitted that the termination is illegal, arbitrary and unwarranted, whereas the workman appointed subsequent to the Petitioner's appointment were continued but the services of the Petitioner were terminated. The alleged action is also violative of Section 25-M of the Industrial Disputes Act. The Respondent has not maintained the seniority list and has not followed the procedure for retrenchment under Section 25-G of the Industrial Disputes Act. Ever since the date of termination, the Petitioner is unemployed and could not secure any alternative employment in spite of his best efforts. The Petitioner is facing severe financial difficulties due to unemployment. There are no latches on the Part of the Petitioner ever since the disengagement in April, 1977. The Petitioner has been making several representations to the Management. His candidature was also not considered for recruitment. It is therefore prayed that the Hon'ble Court may be pleased to hold that the disengagement of the Petitioner with effect from 26-4-1977 as illegal, arbitrary and unwarranted and consequently pass an award directing the Respondent Management to reinstate the petitioner into service with all consequential benefits.

3 The averments of the counter filed by the Respondent read as follows :

It is submitted that the petitioner was engaged as Daily Rated Watchman during the period from 13-4-1976 to 25-4-1977 depending upon the exigency of work. The petitioner did not work continuously for 240 days. The provision of Section 25(F) of the Industrial Disputes Act does not apply to the present case. The non-engagement of the petitioner is legal, valid and according to law. The petitioner's services were engaged only on casual basis depending on the exigencies of work and as such the petitioner is not entitled for reinstatement/regular appointment in the FCI. That apart the petitioner's name was not sponsored by Employment Exchange, for considering for regular employment at that time. The petitioner did not raise any dispute till 1987 and as such there is a delay of more than 9 years in raising

the dispute. It is totally incorrect to say that since 1976 the petitioner made several representations. Infact since 1976 till 1986 the petitioner never made any representation. The instructions issued in Head-quarters Gazette Notification does not apply to the petitioner's case. The above dispute suffers from latches, and it cannot be treated as an Industrial Dispute. In view of what has been stated above the petitioner herein is not entitled to any relief and this Hon'ble Court may be pleased to dismiss the petition.

4. W. W. 1 was examined for the petitioner and the petitioner's side was closed. Exs. W/1 to W/8 were marked for the Petitioner. MW-1 was examined for the respondent and the Respondent's side was closed. No document was marked for the Respondent.

5. The point for adjudication is whether the action of the Management of Food Corporation of India, Kurnool (A.P.) in terminating the services of Shri M. Shankar Natch, Ex-Watchman is justified? If not, to what relief, the workman concerned is entitled to?"

6. POINT :—The admitted facts of the case are that the Petitioner was appointed temporarily on daily rate wages from 13-4-1976 and he worked in the Respondent Corporation till 25-4-1977 with intermittent breaks and the services of the Petitioner were being terminated and he was being re-appointed and finally he was terminated from service from 25-4-1977. The case of the Petitioner was that inspite of the repeated requests, the Respondent Corporation did not reinstate him after 25-4-1977, and therefore in 1986 he resorted to the conciliation proceedings, that the conciliation failed and that the petitioner worked for more than 240 days in the year immediately prior to the date he was removed from service without complying with the mandatory provisions of Section 25-F of the I. D. Act and therefore he is entitled to be reinstated into service.

7. The contention of the Respondent was that the Petitioner did not work for 240 days continuously and therefore the provisions of Section 25-F of the I. D. Act are not applicable to this case and the Petitioner is not entitled for reinstatement in this case. The question that is to be decided is whether the Petitioner worked for more than 240 days, for him to claim that his removal from service amounts to retrenchment and that the retrenchment without complying with the provisions of Section 25-F of the I. D. Act is illegal and therefore he is entitled to be reinstated. During the course of cross examination M. W. 1 stated that the Petitioner worked in the Respondent Corporation from 13-4-1976 to 25-4-1977 with breaks of one or two days in every month of his service, though he denied the suggestion that the Petitioner worked for 240 days continuously within the period of 12 months immediately prior to the date of his dismissal from service. It is clear from the above extracted portion of the evidence of M. W. 1 that the Petitioner worked for about 12 months continuously with breaks of one or two days in every month of his service which is nothing but artificial breaks which leads to the inevitable inference that the Petitioner worked continuously for more than 240 days in view of the evidence of M. W. 1, that he categorically deposed that the petitioner worked in the Respondent Corporation from 13-4-1976 to 25-4-1977 with breaks of one or two days in every month of his service. So it cannot but be held that the petitioner worked continuously for more than 240 days within the period of 12 months immediately prior to the date of his dismissal from service. In such a case the mandatory provisions of Section 25-F of the I. D. Act would come into play, as the removal of the petitioner from service amounts to retrenchment as defined in Section 2(100) of the I. D. Act and the Respondent Corporation is bound to issue one month's notice or pay the wages of one month in lieu of not issuing one month's notice and also the Respondent has to pay retrenchment compensation, as contemplated under Section 25-F of the I. D. Act. It is admitted by M.W. 1 that at the time of dismissing the petitioner from service, one month's notice was not given to him, nor he was paid one month's salary in lieu of not issuing one month's notice and that the petitioner was not paid retrenchment compensation at that time. So it is clear from the evidence brought on record that the Petitioner worked

continuously for more than 240 days within the period of 12 months immediately prior to date of his removal from service and that the Respondent did not comply with the mandatory provisions of Section 25-F of the I. D. Act before retrenching the petitioner from service. So it is clear from the evidence brought on record that the Respondent Corporation did not comply with the mandatory provisions of Section 25-F of the I. D. Act in not paying the retrenchment compensation.

8. It is contended by the learned counsel for the Respondent that as against the judgement in W. A. No. 173/88 the Respondent Corporation filed SPL No. 5178-79/90 on the file of the Supreme Court of India and that the order in the said Civil Appeal was made by the Supreme Court of India on 31-10-1990 and that as per said Order, the Government of India has to give an opportunity of being heard to both parties before referring the matter to this Tribunal and that the Government of India did not give any opportunity of being heard to the Respondent Corporation and that therefore the reference in the present case is invalid under law. As seen from the counter filed by the Respondent Corporation, this plea was not taken and raised the counter. There is no evidence brought on record to show that the Government of India did not give an opportunity of being heard to both the parties before referring the matter to this Tribunal. On the other hand it is to be noted that the copy of the Order of the Supreme Court of India in Civil Appeal No. 5178-79/90 is not filed before this Tribunal by the Respondent Corporation. It is also to be noted that the Order of the Supreme Court in Civil Appeal No. 5178-79/90 was passed long subsequent to the date of the reference i.e. 29-4-1988 made by the Government of India, Ministry of Labour. So the contention raised by the learned counsel for the Respondent in this regard is of no avail to the Respondent Corporation. It is in the evidence of M. W. 1 that after the judgement of the High Court in Writ Petition, the Government of India did not give an opportunity of being heard to the Respondent Corporation before referring the dispute to this Tribunal. It is to be noted that M. W. 1 deposed that he has been working as Assistant Manager in the Respondent Corporation since 1958 and that he has been working at Kurnool since June, 1990. Admittedly the matter was referred by the Government of India, Ministry of Labour, by its order dated 29-4-1988 by which time M. W. 1 was not working in Kurnool Office and so it cannot be said that M. W. 1 has got personal knowledge whether Government of India has given an opportunity of being heard or not to the Respondent Corporation before referring the matter to this Tribunal. No documentary evidence is filed for M. W. 1 to say that he is speaking from out of the record available as he was not having personal knowledge of the matter in respect of things that have happened prior to June, 1990 in this case. So the statement of M. W. 1 that after the judgement of the High Court in W. P. No. 17018/87 the Government of India did not give an opportunity of being heard to the Respondent before referring the dispute to this Tribunal and carry any weight. Therefore I am of opinion that the contention raised by the learned counsel for the Respondent in this regard is of no help to the Respondent Corporation. In view of my discussion, I am of opinion that the Petitioner is entitled for the relief of reinstatement with continuity of service, but without back wages under the facts and circumstances of the case and in view of the admission made by the Petitioner in his evidence as W. W. 1 that he may be reinstated without back wages. Hence I answer the point accordingly.

9. In the result, an Award is passed directing the Respondent Corporation to reinstate the Petitioner into service with continuity of service, but without back wages. The Respondent Corporation is further directed to reinstate the petitioner within one month from the date of the publication of this Award, failing which the petitioner is entitled to recover the wages from the date of publication of this Award. There will be no orders as to costs under the facts and circumstances of the case.

Dictated to the Stenographer, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 14th day of July, 1992.

G KRISHNA RAO, Industrial Tribunal

APPENDIX OF EVIDENCE

Witnesses examined for Workman.

W. W. 1 M. Shankarnath

Witnesses examined for the Management.

M. W. 1 F. J. Chella Derai.

Documents marked for the Workmen.

- Ex. W. 1—Appointment order dated Nil issued to M. Shankarnath by the District Manager, Food Corporation of India, Kurnool.
- Ex. W. 2/9-7-1986.—Termination order dated 9-7-1976 issued to M. Shankarnath and 9 others by the Distt. Manager, F. C. I. Kurnool.
- Ex. W. 3/14-7-1976.—Appointment order dated 14-7-76 issued to K. Shankarnath and 9 others by the Distt. Manager, F. C. I. Kurnool.
- Ex. W. 4/11-10-76.—Termination order dated 11-10-76 issued to K. Shankarnath and 9 others by the Dist. Manager, F.C.I., Kurnool.
- Ex. W. 5/14-10-1976.—Appointment order dated 14-10-1976 issued to M. Shankarnath and 9 others by the Distt. Manager, F. C. I. Kurnool.
- Ex. W. 6/24-12-1985.—Photostat copy of the representation dated 24-12-1985 made by M. Shankarnath to the Asstt. Labour Commissioner (C), Hyderabad, Hyderabad.
- Ex. W. 7/17-7-1986.—Photostat copy of the Minutes of Conciliation proceedings held on 17-7-1986.
- Ex. W. 8.—Photostat copy of the failure of conciliation report.

नई दिल्ली, 28 जुलाई, 1992

का.प्र. 2307—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) का प्रांग 17 के अनुसूचना में, केन्द्रीय सरकार फूड कॉर्पोरेशन ऑफ इंडिया व. प्रबन्धन के संज्ञा निर्मातकों और उनके कर्मचारियों के बीच, अनुसूचा में विहित औद्योगिक विवाद में औद्योगिक अधिकरण हैदराबाद के प्रांग को प्रकाशित करती है, जो केन्द्रीय सरकार की 27-7-92 को प्राप्त हुआ था।

[संख्या एन- 42012/88-डी II (बी)]

सुभाष चन्द्र गर्ग, डेस्क अधिकारी

New Delhi, the 28th July, 1992

S.O. 227.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Hyderabad, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Food Corporation of India and their workmen, which was received by the Central Government on 27-7-1992.

[No. L-42012/88/D-II(B)]

S. C. SHARMA, Desk Officer.

ANNEXURE

BEFORE THE INDUSTRIAL AT HYDERABAD
PRESENT :

Sh. G. Krishna Rao, B.A., B.L., Industrial Tribunal.

FOURTEENTH DAY OF JULY NINETEEN HUNDRED
NINETY TWO

Industrial Dispute No. 51 of 1988

BETWEEN :

The Workmen of Food Corporation of India,
Kurnool (A.P.) ... PETITIONER

AND

The Management of Food Corporation of India,
Kurnool (A.P.) ... RESPONDENT

This case is coming for final hearing before me in the presence of M/s G. Bishapathi, G. Vidya Sagar, V. Vishwanatham, N. Vineth Raj and K. V. V. Bhaskar, Advocates for the petitioner-workmen and Sri K. Satyanarayana Rao, Advocate for the Respondent-Management and upon perusing the material papers on record and having stood over for consideration till this day, the Court passed the following :

AWARD

This is a reference made by the Government of India, Ministry of Labour, by its Order No. L-42012/88/86-D.II (B) dated 29-4-1988 for adjudication of the dispute between the Management of Food Corporation of India, Kurnool and their workmen setting forth the point for adjudication appended thereto as follows :

"Whether the action of the management of Food Corporation of India, Kurnool (A.P.) in terminating the services of Sri A. Noor Ahmed, Ex-daily rated watchman is justified? If not, to what relief, the workman concerned is entitled to?"

The said reference was registered as I.D. No. 51 of 1988 on the file of this Tribunal. After receiving the notices issued by this Tribunal, both parties put in their appearance and the Petitioner filed claim statement on 1-9-1988 and the Respondent filed counter on 7-12-1988.

2. The averments of the claim statement filed by the Petitioner read as follows :

It is respectfully submitted that the Petitioner was appointed as Watchman on daily wage basis. The Food Corporation of India is engaged in procurement of Paddy. During the years 1973-77, there was heavy procurement programme consequent to the bumper crops in Andhra Pradesh. However, the recruitment in all categories of posts of Watchman sweepers, Assistant (Depot) etc., was done on daily rate basis. Having realised that the appointing of employees on daily rate basis is not proper, the Food Corporation of India has issued instructions to regularise the services of the daily rated workman from 8-1-1976 onwards. In respect of employees who were terminated from service, an amendment was introduced to the Food Corporation of India Employees Service Regulations in 1976 to the effect that the employees who were recruited on daily rate basis should also be considered for appointment against direct recruitment along with the candidates sponsored by the Employment Exchange. The relevant Gazette notification is extracted below :

"Provided further such of the employees who were recruited on daily rated basis for periods of less than 3 months on purely temporary basis and whose services have been retained after allowing periodical breaks shall also be eligible to be considered for appointment against the direct recruitment along with candidates sponsored by Employment Exchange."

It is submitted that the Petitioner worked as Watchman from 1-6-1976 to 28-8-1976 and his services were dis-engaged from 29-8-1976 without any notice or any valid reasons. Ever since the dis-engagement, the petitioner has been making representations personally and also through Union to consider his candidature for regular appointment in pursuance of the amendment as stated supra. But there was no response. Therefore, the petitioner was constrained to move the conciliation proceedings before the Assistant Labour Commissioner (Central), Hyderabad. However, there was no meeting point between the parties and the conciliation ended in failure. The Conciliation Officer sent a failure report to the Government of India. The Government of India on

erroneous consideration of the facts on law, rejected the case for reference to this Hon'ble Tribunal. Aggrieved by the decision of the Government of India, the petitioner filed Writ Petition No. 16011/1987. The Hon'ble High Court of Andhra Pradesh, by an order dated 3-2-1988, allowed the Writ Petition and directed the Government of India to refer the matter for adjudication by this Hon'ble Tribunal. Aggrieved by the orders of the learned Single Judge, the management has filed writ appeal No. 921/1988 and the same was dismissed by an order dated 23-6-1988. In pursuance of the orders of the High Court of Andhra Pradesh, the present reference is made to this Hon'ble Tribunal. It is submitted that the impugned order of dis-engagement is illegal and arbitrary. The petitioner made several representations but the Management have not considered the same. It is submitted that the termination is illegal, arbitrary and unwarranted, whereas the workmen appointed subsequent to the petitioner's appointment were continued but the services of the petitioner were terminated. The alleged action is also violative of Section 25-H of Industrial Disputes Act. The Respondent has not maintained the seniority list and has not followed the procedure for retrenchment under Section 25-G of the Industrial Disputes Act. Ever since the date of termination, the petitioner is unemployed and could not secure any alternative employment in spite of his best efforts. The petitioner is facing severe financial difficulties due to unemployment. There are no latches on the part of the petitioner ever since the dis-engagement in August, 1976. The petitioner has been making several representations to the management. His candidature was also not considered for recruitment. It is therefore prayed that the Hon'ble Court may be pleased to hold that the dis-engagement of the petitioner with effect from 28-8-1976 as illegal, arbitrary and unwarranted and consequently pass an award directing the Respondent-Management to reinstate the petitioner into service with all consequential benefits.

3. The averments of the counter filed by the Respondent read as follows :

It is submitted that the petitioner was engaged as Daily Rated Watchman during the period from 1-6-1976 to 28-8-1976 depending upon the exigency of work. The petitioner did not work for 240 days. The provisions of Section 25(F) of the Industrial Disputes Act do not apply to the present case. The non-engagement of the petitioner is legal, valid and according to law. The petitioner's services were engaged only on casual basis depending on the exigencies of work and as such the petitioner is not entitled for reinstatement/regular appointment in the F.C.I. that apart the petitioner name was not sponsored by Employment Exchange for considering for regular employment at that time. The petitioner did not raise any dispute till 1987 and as such there is a delay of more than 9 years in raising the dispute. It is totally incorrect to say that since 1976 the petitioner made several representations. Infact since 1976 till 1986 the petitioner never made any representation. The instructions issued in Head Quarters Gazette Notification do not apply to the petitioner's case. The above dispute suffers from latches, and it cannot be treated as an Industrial Dispute. In view of what has been stated above the petitioner herein is not entitled to any relief and this Hon'ble Court may be pleased to dismiss the petition.

4. W.W. 1 was examined for the petitioner and the Petitioner's side was closed. Exs. W1 to W3 were marked for the Petitioner. M.W.1 was examined for the Respondent and the Respondent's side was closed. Ex. M-1 was marked for the Respondent.

5. The point for adjudication is whether the action of the Management of Food Corporation of India, Kurnool (A.P.) in terminating the service of Sri A. Noor Ahmed, Ex. Daily rated watchman is justified, if not, to what relief, the workman concerned is entitled to?

6. POINT—The admitted facts of the case are that the Petitioner worked as Watchman from 1-6-1976 to 28-8-1976 on, daily rated wages, that the petitioner was removed from service from 29-8-1976. The contention of the petitioner was that ever since the dis-engagement the petitioner has been making representation personally and also through the Union

to consider his candidature for regular appointment in pursuance of the Employees Service Regulations of 1976, that there is no response, that he moved the conciliation proceedings before the Asst. Labour Commissioner, Central, Hyderabad, that however there was no meeting point between the parties, that the conciliation ended in failure, that the Conciliation Officer sent failure report to the Government of India, that the Government of India on erroneous consideration of the facts on law rejected the case for reference to this Tribunal, that aggrieved by the decision of the Government, the Petitioner filed Writ Petition No. 16011/1987 that the Hon'ble High Court by an Order dated 3-2-1988 allowed the Writ Petition and directed the Government of India to refer the matter for adjudication to this Tribunal, that aggrieved by the Orders of the learned single Judge, the management has filed Writ Appeal No. 921/88 and the same was dismissed by an Order dated 23-6-1988, that is pursuance of the Order of the High Court of Andhra Pradesh, the present reference was made to this Tribunal, that the impugned order of disengagement is illegal, and arbitrary, that the Petitioner made several representations but the Management have not considered the same, that the termination is illegal, arbitrary and unwarranted, that the workman was appointed subsequent to the petitioner's appointment were continued but the services of the petitioner were terminated and that he is entitled for reinstatement. It is contended for the Respondent that the Petitioner did not work for 240 days, that the provisions of Section 25-F of the I.D. Act do not apply to the present case, that the non-engagement of the petitioner is legal, valid and according to law. The petitioner's services were engaged only on casual basis depending on the exigency of work and as such the petitioner is not entitled for reinstatement on regular appointment in the Food Corporation of India, the petitioner's name is not sponsored by the Employment Exchange for considering the regular employment, that the instructions issued in Head Quarters Gazette Notification do not apply to the petitioner's case. The petitioner examined i.e. the concerned workman himself as W.W. 1 to establish his case and he deposed that he worked as Watchman in Food Corporation of India, Kurnool from 1-6-1976 to 28-8-1976, that Ex. W1 is the appointment letter dated 1-6-76, that after his termination, he made representations to the Management orally for appointment, but the Management did not take him into duty, although godowns are still in existence, that whereas new persons were taken and in this case was not considered, that thereafter he raised the dispute, that Ex. W2 is the minutes of the conciliation proceedings held on 6-3-86, that Ex. W3 is the failure report dated 11-4-1986, that he prays that an Award may be passed ordering reinstatement without back wages. During the cross-examination he stated that only for three months he worked in the Respondent Office, that too on daily wage basis though they used to be paid once in a month.

7. The Respondent examined M.W.1 and he deposed that he knows the petitioner, that he worked as daily rated watchman from 1-6-1976 to 28-8-1976 at hired godowns at Kurnool under the Respondent Corporation and the petitioner was being employed as per the need, that during the years 1976 and 1977 they have buffer stocks that they hired godowns for keeping the said buffer stocks during those two years, that after distribution of the stocks, the godowns hired vacated, that they had terminated the services of the petitioner w.e.f. 28-8-1976 and thereafter he was not employed, that the termination order dated 28-8-1976 was issued to the petitioner terminating his services with effect from 28-8-1976 afternoon and it was served on the petitioner and the office copy of the said termination order was not available now that after termination of the services of the petitioner under the order dated 28-8-1976 the petitioner never represented to the Respondent-Corporation to employ him again nor did he challenge the action of the Respondent in terminating the services at any time till he raised the dispute in this case after lapse of nine years, that the petitioner was not sponsored by the Employment Exchange and he was first appointed in the year 1976, that the Head Office of the Respondent Corporation at Delhi issued a circular dated 7-9-1977 issuing instructions to the subordinate offices to conduct interviews to the candidates who are appointed before 25-1-1976 along with the candidates sponsored by the Employment Exchange, that interviews were conducted to those who were in service appointed prior to 25-1-1976 along with the candidates sponsored by the Employment Exchange, that the petitioner was

not interviewed because he was not appointed prior to 25th January, 1976 and his name was also not sponsored by the Employment Exchange, that the godowns were closed after April, 1977 that all the daily rated workmen were terminated from service after closure of the godowns, that after closure of the godowns, no daily rated watchman was employed, that the Government of India did not refer the matter for adjudication after the petitioner raised the dispute, that the petitioner filed W.P. No. 16011 of 1987 on the file of the High Court of Andhra Pradesh against the Respondent and Government of India to issue directions to the Government of India to refer the dispute to this Court for adjudication, that W.P. No. 16011 of 1987 was allowed by the High Court of Andhra Pradesh on 3-2-1988, that thereafter the Government of India did not issue any notice to the Respondent-Corporation to hear the matter on merits and referred the dispute to this Court for adjudication, that similarly one Mr. A. Basha Saheb filed Writ Petition No. 18177 of 1987 on the file of the High Court of Andhra Pradesh for issue of a similar direction against the Government of India and the Respondent, that in the Writ Petition filed by the Petitioner and Mr. A. Basha Saheb, the High Court directed the Government of India to refer the dispute to this Industrial Tribunal, that as against the judgement in W.P. No. 18177 of 1987 the Respondent-Corporation filed Writ Appeal No. 174 of 1988 on the file of the High Court of Andhra Pradesh and the same was dismissed confirming the judgement in Writ Petition, that as against the judgement in Writ Appeal No. 174 of 1988 the Respondent filed SLP No. 5178-79 of 1990 on the file of Supreme Court of India, that the order in the said Civil Appeal was made by the Supreme Court of India on 31-10-1990 and that Ex. M1 is the photostat copy of the said order.

8. The main point that falls for consideration in this case is whether the petitioner worked continuously for more than 240 days within the period of 12 months immediately prior to the date of his retrenchment or removal from service, for the petitioner to claim, that the Respondent failed to comply with the provisions of Section 25-F of the I.D. Act and therefore he is entitled for reinstatement. Admittedly, Even according to the case of the Petitioner, the petitioner worked for the period from 1-6-1976 to 28-8-1976 in the Respondent Corporation. Even if it is taken that the petitioner worked on all the days during that period i.e. even on holidays and Sundays, the total period he worked would come to 89 days only and it is not the case of the petitioner that he worked during any other period during the period of 12 months immediately prior to the date of his removal from service, besides the period from 1-6-1976 to 28-8-1976. Therefore, in any view of the matter, the contention of the petitioner that he is entitled for reinstatement does not stand under law as he did not work for 240 days continuously within the period of 12 months immediately prior to the date of his removal from service which is minimum requirement for attracting the provisions of Section 25-F of the I.D. Act. In any view of the matter, the petitioner is not entitled for any relief in this case in my opinion. Therefore, I hold that the petitioner is not entitled for the relief of reinstatement or any other relief in this case. Hence I answer the point accordingly.

9. In the result, an Award is passed holding that the Petitioner is not entitled for reinstatement or for any relief in this case. There will be no order as to costs under the facts and circumstances of the case.

Dictated to the Stenographer, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 14th day of July, 1992.

G. KRISHNA RAO, Industrial Tribunal

Appendix of evidence

Witnesses examined
for Petitioner.

W.W. 1 A. Noor Ahmed

Witnesses examined
for Respondent.

M.W. 1 P. J. Chaffa Dorai

Documents marked for the Petitioner.—workmen.

Ex. W1—Appointment order dated 1-6-76 issued to A. Noor Ahmed by the District Manager, F.C.I., Kurnool.

Ex. W2—Photostat copy of the minutes of conciliation proceedings held on 6-3-1986.

Ex. W-3—Failure of conciliation report dated 11-4-1986.

Documents marked for the Respondent.—Management.

Ex. M1 31-10-90—Photostat copy of the Supreme Court order in Civil Appeal No. 5178-79/1990.

नई दिल्ली, 28 जुलाई, 1992

कांसा 2208.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डाबर कोयला प्राईमर्स ईंसी. लि. के प्रबन्धन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, आसनसोल के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार का 23-7-92 को प्राप्त हुआ था।

[संख्या एन-422012/329/91-आई आर (सी-II)]

सुभाष चंद्र शर्मा, डेस्क अधिकारी

New Delhi, the 28th July, 1992

S.O. 2208.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Asansol, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Dabar Colliery of E.C. Ltd. and their workmen, was received by the Central Government on 23-7-1992.

[No. L-22012/329/91-IR(C-II)]

S. C. SHARMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL, ASANSOL

Reference No. 13/92

PRESENT :

Shri N. K. Saha Presiding Officer.

PARTIES :

Employers in relation to the Management of Dabar Colliery of M/s. E. C. Ltd.

AND

Their Workman.

APPEARANCES :

For the Employers—Sri B. N. Lala, Advocate.

For the Union—None.

INDUSTRY: Coal.

STATE: West Bengal

Dated, the 16th July, 1992

AWARD

The Govt. of India in the Ministry of Labour in exercise of the powers conferred on them by clause (d) of sub-section

(1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, has referred the following dispute to this Tribunal for adjudication vide Ministry's Order No. L-22012/329/91-IR (C-II) dated the 4th March, 1992.

SCHEDULE

1. Whether the action of the Management of Rangakalanah Coal of Dabar Colliery of M/s. Eastern Coalfields Ltd., P. O. Samdi, Dist. Burdwan, in not sending Shri Fakir Paul, Water Mazdoor to Medical Board as per I. I. No. 76 is justified? If not, to what relief is the concerned workman entitled to?"

2. This Reference was received by this Tribunal on 10-3-92. The union appeared and took several adjournments for filing written statement and ultimately filed written statement on 30-6-92. But in the meantime the workman sent an application for passing a no-dispute award. Accordingly notice was issued both to the union and to the workman to appear to-day (16-7-92). The unions representative Sri Bidyut Mondal files a petition signed by Sri S. K. Jha, Vice-President of the union stating that the workman is no more interested in the dispute and he has applied for a no-dispute award. Sri Fakir Paul the concerned workman who is present in Court to-day also submits that he is longer interested to proceed with this case and prays for passing a no-dispute award.

3. In the above circumstances, I have no other alternative but to pass a no-dispute award. Accordingly a no-dispute award is passed in this case.

N. K. SAHA, Presiding Officer

नई दिल्ली, 28 जुलाई, 1992

कांसा 2209.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नाबाकजोरा कोयला प्राईमर्स ईंसी. लि. के प्रबन्धन के संबंध में नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, आसनसोल के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार का 27-7-92 को प्राप्त हुआ था।

[संख्या एन-22012/141/90-आई आर (सी-11)]

सुभाष चंद्र शर्मा, डेस्क अधिकारी

New Delhi, the 28th July, 1992

S.O. 2209.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Asansol as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Nabakajora Colliery of M/s. E. C. Ltd. and their workmen, which was received by the Central Government on 27-7-92.

[No. L-22012/141/90-IR(C-II)]

S. C. SHARMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL, ASANSOL

Reference No. 47/90

PRESENT

Shri N. K. Saha, Presiding Officer.

PARTIES :

Employers in relation to the Management of Nabakajora Colliery of Kajora Area of M/s. E. C. Ltd.

AND

Their Workman

APPEARANCES :

For the Employers—Sri P. K. Das, Advocate.
For the Workman—Sri M. Mukherjee, Advocate.
INDUSTRY: Coal. STATE: WEST Bengal.

Dated, the 21st July, 1992

AWARD

The Government of India in the Ministry of Labour in exercise of the powers conferred on them by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, has referred the following dispute to this Tribunal for adjudication vide Ministry's Order No. L-22012(4)/90-IR (C-II) dated the 25th October, 1990.

SCHEDULE

"Whether the action of the management of Nabakajora Colliery of M/s. Eastern Coalfields Ltd., P. O. Kajoragram, Dist. Burdwan in dismissing Sri Bhunath Bouri, Line Mazdoor with effect from 6-8-86 is justified? If not, to what relief is the concerned workman entitled?"

2. The case of the union in brief is that Bhutnath Bouri the concerned workman was Line Mazdoor of Nabrakajora Colliery under M/s. Eastern Coalfields Ltd. He was a permanent employee of that colliery. Due to this illness he could not attend his duty from 7-3-86 to 28-4-86. For the said absence the concerned workman was straightway dismissed from service on 8-6-86 by the Agent/Manager of the said colliery. The said dismissal order is illegal, wrongful, motivated and against the principles of natural justice. The workman was not given any opportunity of being heard prior to his dismissal. The quantum of punishment is also disproportionate with the alleged offence. The management by imposing capital punishment has taken away bread of a poor innocent scheduled caste family. So the union prays for reinstatement of this workman with full back wages and seniority in service.

3. The union raised dispute on behalf of the workman. But the attempts of conciliation failed and the matter was sent to the Ministry of Labour, Govt. of India. Ultimately the dispute has been referred to this Tribunal for adjudication.

4. The management has filed written statement contending inter-alia that the sponsoring union is not a function union of the colliery and prior to raising of the present dispute the union made no representation or correspondence with the employer at any point of time. The workman was chargesheeted for misconduct committed by him. The workman failed to submit his reply against the charges. So a departmental enquiry was held. The enquiry was duly conducted. The workman was found guilty in that domestic enquiry and on the result of the same he was dismissed from service. The punishment is quite proportionate considering the gravity of the misconduct. So the workman is not entitled to get any relief in this case.

5. At the very outset Sri P. K. Das the Id. Advocate for the management has urged before me that the present dispute at the instance of the union is not maintainable as this union has no representative character. The union was not a functioning union of the colliery. So the present dispute is not maintainable. The union has failed to adduce any evidence on this point. So this point stands rebutted.

Be that as it may, it may be that the union has no representative character, but according to Section 2A of the Industrial Disputes Act, 1947 the workman himself has the right to raise the dispute as it is a case of dismissal. So considering the facts and circumstances of the present case I find that it is a dispute raised by the workman himself u/s 2A of the Industrial Disputes Act. So the present Reference is maintainable.

6. It is the case of the workman that no enquiry was held against him. The management failed to produce the record of the domestic enquiry proceedings on the plea; that it was missing and failed to substantiate that the domestic enquiry was properly and fairly held observing the principles of natural justice. So on 17-1-92 this Tribunal has held that the domestic enquiry was not properly and fairly held. The entire domestic enquiry proceedings and the findings of the same were set aside and this Tribunal decided to hold fresh enquiry and accordingly this Tribunal has held a fresh enquiry.

7. In this case the chargesheet against the workman framed by the management has been marked as Ext. M-2. Sri R. K. Roy, Sr. Personnel Officer of Nabakajora Colliery has been examined as MW-1. In addition to that the management has also produced documents Exts. M-3 to M-5 to show that in some other occasions the present workman absented himself without authority and he was warned for the same. The management has also produced a reply given by the present workman Ext. M-4. All the documents have been marked as Exhibits on formal proof being waived, but without admitting the contents of the same. In this case the workman has not examined himself and he has also not filed any document. Sri Manoj Mukherjee the Id. Advocate for the union has urged before me that the Ext. M-2 cannot be treated as chargesheet and the Court must hold that there is no charge against the present workman, as such the alleged charge must fail. He has further urged before me that even if the Court finds that the charge has been proved in that event the workman is also entitled to get his full back wages from the date of alleged dismissal upto the date of passing award by this Tribunal. In support of his contention he has cited before me the case reported in Lab. I.C. Page 1892. Further he has urged before me that past conduct of the workman cannot be considered by this Tribunal in this proceeding as there is no mention of the same in the chargesheet. In support of his contention he has cited before me the case reported in 1991 Lab.I.C. page 1039.

With due respect to his contention I like to say that every case comes with some background of its own. In the instant case it is admitted in the written statement that the workman was absent from 7-3-86 to 28-4-86. It is in the written statement that due to illness the workman could not attend his duty. But there is nothing to substantiate the said claim. I find that the charge against the workman in Ext. M-2 was duly framed and this Court has held the enquiry on the basis of this charge. In this charge it has been clearly stated that the workman had been absending himself without any permission and authority w.e.f. 7-3-86. But during the course of hearing the workman did not venture to pledge his oath to refute the charge. So consequently considering the materials on record and the facts and circumstances I find that the charge levelled against the workman Bhutnath Bouri has been proved. I find that the workman Bhutnath Bouri is guilty of the charge as mentioned in the chargesheet Ext. M-2.

8. Now comes the question of imposing punishment. Sri P. K. Das the learned Advocate for the management has urged before me with all force that considering the instant misconduct of the present workman and his past conduct this Tribunal must dismiss the workman from service. With due respect to his contention I like to say that the dismissal from service is worse than capital punishment. The Hon'ble Supreme Court has held that capital punishment shall be imposed only in a rare of the rarest cases. This poor workman belongs to scheduled caste community. So the justice must be tempered with mercy. Sri Manoj Mukherjee has urged before me that according to the principles laid down in the case reported in 1990 Lab.I.C. page 1892 the workman is entitled to get full back wages and the Court has every power to be liberal in imposing the punishment in view of the cases reported in AIR 1989 (S.C.) page 149 and 1990 Lab.I.C. page 884.

9. Considering the facts and circumstances of every case the Court is to strike the balance. I find that in a case like the present one the dismissal from service will be disproportionate punishment. I find that if the workman be reinstated in service without back wages and if his increment be withheld for next three years that will meet the ends of justice.

10 In the result I find that the action of the management to Nabakajoti Colliery in dismissing Bhupath Bouri, Line Mazdoor w.e.f. 8-6-86 was not justified. The workman shall be reinstated in service without back wages within three months from the date of publication of the award and he shall work for next three years at the last pay drawn before his dismissal. The entire back wages of the workman stands forfeited as penalty. This order shall not affect the seniority of the workman in any way and also in giving him increments after completion of three years from the date of reinstatement.

This is my award.

S. K. SAHA, Presiding Officer

ॐ श्री गुरुभ्यो नमः १९९२

आदेश सं. १११—औद्योगिक विवाद अधिनियम १९४७ (1947 का १७) के प्रांग १७ के अनुसरण में केंद्र सरकार द्वारा जारी की गई ऑफ मैसर्स ईस्टर्न कोल्फील्ड्स लि. के प्रबन्धकों के सम्बन्ध में आदेशों के अनुसार कर्मचारियों के बीच अनुबंध में निरूपित औद्योगिक विवादों में औद्योगिक अधिकरण सामान्यतः एक पक्ष के द्वारा प्रस्तुत की गई सूचनाओं के आधार पर कार्य करता है। १९७९-८० के वर्ष में प्रस्तुत की गई सूचनाओं के आधार पर कार्य करता है।

निरणय सं. १११—१९९२ के वर्ष में प्रस्तुत की गई सूचनाओं के आधार पर कार्य करता है।

New Delhi the 28th July 1992

SO 2210—In pursuance of Section 17 of the Industrial Disputes Act 1947 (14 of 1947) the Central Government hereby publishes the award of the Central Govt. Industrial Tribunal, Asansol as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Madhapur Colliery or M/s F.C. Ltd. and their workmen which was received by the Central Government on 23-7-92.

[No. L-22012/212 89 IR (C II)]

S. C. SHARMA, Desk Officer.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL, ASANSOL

REFERENCE NO. 190

PRESENT

Shri N. K. Saha, Presiding Officer

PARTIES

Employers in relation to the Management of Madhapur Colliery of M/s F.C. Ltd.

AND

Their Workmen

APPEARANCES

For the Employers—Shri P. Banerjee Advocate

For the Workman—Shri B. Kumar Joint Secretary of the Union

INDUSTRY—Coal STATE—West Bengal

Dated, the 13th July 1992

AWARD

The Government of India in the Ministry in exercise of the powers conferred on them by Clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act 1947, has referred the following dispute to this Tribunal for adjudication vide Ministry's Order No. L-22012(212)/89-IR(C II) dated the 27th December 1989.

Schedule

Whether the action of the Management of Madhapur Colliery of M/s Eastern Coalfields Ltd. in superannuating Sri Kesho Mistry, S. Trimmer on 13-10-87 is justified? If not to what relief the workman concerned is entitled?

2 The case of the union is that the concerned workman Sri Kesho Mistry was a S. Trimmer of Madhapur Colliery under M/s Eastern Coalfields Ltd. His date of birth is 3-10-1916. The said workman is an illiterate person. His date of birth was wrongly recorded in the office record. He applied before the management for certification of his age. But violating the rules he was served with a notice of superannuation on 13-5-87 stating that he would attain the age of 60 years on 13-10-87. The management being persuaded subsequently advised the workman to appear before the Screening Committee on 22-6-87. Accordingly he appeared before the Screening Committee and the said committee advised him to appear before the Age Assessment Committee at Sincorin Hospital. But without getting the report from the Age Assessment Committee the workman was superannuated w.e.f. 13-10-87.

The attempts of conciliation ended in failure. The matter was sent to the Ministry of Labour Government of India and ultimately the dispute has been referred to this Tribunal for adjudication.

3 The management has filed written objection containing inter alia that at the time of entry in service the workman declared his year of birth as 1927 and he same was duly entered in the B Form Register maintained by the erstwhile management and it was duly recorded when the management of Eastern Coalfields Ltd. prepared fresh B Form Register in 1986. The employer issued Service Extracts to all its workmen in duplicate asking them to verify its particulars and return the same with objection if any. The present workman raised objection through Service Extracts and accordingly the case was referred to the Age Determination Committee. After consideration of all the relevant aspects the said Age Determination Committee assessed his age and found the entry in B Form Register is correct. Accordingly the workman was superannuated. He is now entitled to get no relief in this case.

4 Admittedly the concerned workman Sri Kesho Mistry was a S. Trimmer of Madhapur Colliery under Eastern Coalfields Ltd. The workman claims that his date of birth is 13-10-1916 and according to the management the workman was aged 42 years on the date of entry of his service on 13-10-69. Sri P. Banerjee the learned Advocate for the management has taken me through all the Exhibits M-1 to M-7 to convince that the age of this workman was correctly recorded in the 'B' Form Register. So the workman is not entitled to get any relief.

Sri Banerjee has urged reforming that only through Service Experts at the fag end of his service career, the workman raised objection regarding his age and after that he was duly examined by the Age Assessment Committee and the said Committee assessed his age which is in conformity with the B Form Register. With due respect to his contention I find that this workman is an illiterate person. He raised objection when he got the opportunity to raise such objection through Service Experts. There is nothing on the record to show that before issue of such Service Experts this workman had any communication or information regarding the recording of date of birth in 'B' Form Register. So it cannot be said that there was any delay in raising the objection. From the record it appears that at best there was a clinical examination of the workman by the Age Determination Committee to assess his age. There is nothing to show that there was any thorough scientific examination of the workman to determine his age. So I am unable to accept the view that the Age Determination Committee rightly assessed the age of the concerned workman. Consequently I hold that the action of the management of Madhapur Colliery in superannuating Sri Kesho Mistry w.e.f. 13-10-87 was not justified. So the management shall refer

the concerned workman to Apex Medical Board to determine his age on the basis of scientific examination and—

- (i) If the Medical Board finds that the concerned workman attained the age of 60 years on 13-10-87 then the workman shall not get any relief in this case.
- (ii) If the Medical Board finds that the concerned workman was less than aged 60 years on 13-10-87 but in the meantime has attained the age of 60 years, then the workman shall get the full wages for the period from the date 13-10-87 to the date of his attaining the age of 60 years.
- (iii) If the Apex Medical Board finds that the workman has not yet attained the age of 60 years, then the workman shall be immediately reinstated in service and shall be paid all the back wages from 13-10-87 to the date of his reinstatement.

This is my award.

N. K. SAHA, Presiding Officer.

नई दिल्ली, 28 जुलाई, 1992

का.पा. 2211.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार फूड कारपोरेशन ऑफ इंडिया के प्रबंधन के सबख नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पत्रापाद को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-7-92 को प्राप्त हुआ था।

[संख्या एल-42012/139/86-डी-II(बी)]

मुद्राण शर्मा, डेस्क अधिकारी

New Delhi, the 28th July, 1992

S.O. 2211.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Food Corporation of India and their workmen, which was received by the Central Government on 27-7-92.

[No. L-42012/239/86-D.II (B)]

S. C. SHARMA, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

PRESENT :

Sri G. Krishna Rao, B.A., B.L., Industrial Tribunal.

Fourteenth day of July Nineteen hundred Ninety two
Industrial Dispute No. 48 of 1988

BETWEEN :

The Workmen of Food Corporation of India, Kurnool
(Andhra Pradesh). Petitioner.

AND

The Management of Food Corporation of India,
Kurnool. Respondent.

This case is coming for final hearing before me in the presence of M/s. G. Bishapathi, G. Vidya Sagar, V. Viswa-
2020 GI/92—6

nathan, N. Vinesh Raj and K. V. Bhaker, Advocates for the Petitioner workmen and Sri K. Satyanarayana Rao, Advocate for the Respondent-Management and upon perusing the material Papers on record and having stood over for consideration till this day, the Court passed the following :

AWARD

This is a reference made by the Government of India, Ministry of Labour, by its Order No. L-42012/139/86-D.II(B) dt. 29-4-1988 for adjudication of the dispute between the Management of Food Corporation of India Kurnool and their workmen setting forth the point for adjudication appended thereto as follows :

‘Whether the action of the management of Food Corporation of India, Kurnool (A.P.) in terminating the services of Sri S. Thahir Hussain Ex-Watchman is justified ? If not, to what relief, the workman concerned is entitled to ?’

The said reference was registered as I.D. No. 48 of 1988 on the file of this Tribunal. After receiving the notices issued by this Tribunal, both parties put in their appearance and the Petitioner filed claim statement on 1-9-1988 and the Respondent filed counter on 7-12-1988.

2. The averments of the claim statement filed by the Petitioner read as follows :

It is respectfully submitted that the Petitioner was appointed as Watchman on daily wage basis. The Food Corporation of India is engaged in procurement of Paddy. During the years 1972—77, there was heavy procurement programme consequent to the bumper crops in Andhra Pradesh. However, the recruitment in all categories of posts of Watchman, Sweepers, Assistant (Depot) etc., was done on daily rate basis. Having realised that the appointing of employees on daily rate basis is not proper, the Food Corporation of India has issued instructions to regularise the services of the daily rated workmen from 8-1-1976 onwards. In respect of employees who were terminated from service, an amendment was introduced to the Food Corporation of India Employees Service Regulations in 1976 to the effect that the employees who were recruited on daily rate basis should also be considered for appointment against direct recruitment along with the candidates sponsored by the Employment Exchange.

The relevant Gazette Notification is extracted below :

“Provided further such of the employees who were recruited on daily rate basis for periods of less than 3 months on purely temporary basis and whose services have been retrained after allowing periodical breaks shall also be eligible to be considered for appointment against the direct recruitment along with candidates sponsored by Employment Exchange.”

It is submitted that the Petitioner worked as Watchman from 7-2-1976 to 5-5-1977 and his services were dis-engaged from 6-5-1977 without any notice or any valid reasons. Ever since the dis-engagement, the Petitioner has been making representations personally and also through Union to consider his candidature for regular appointment in pursuance of the amendment as stated supra. But there was no response. Therefore, the Petitioner was constrained to move the conciliation proceedings before the Assistant Labour Commissioner (Central), Hyderabad. However, there was no meeting point between the parties and the conciliation ended in failure. The Conciliation Officers sent a failure report to the Government of India. The Government of India on erroneous consideration of the facts on law, rejected the case of reference to this Hon'ble Tribunal. Aggrieved by the decision of the Government of India the Petitioner filed Writ Petitioner No. 18893/1987. The Hon'ble High Court of Andhra Pradesh, by an order dated 3-2-1988, allowed the Writ Petition and directed the Government of India to refer the matter for adjudication by this Hon'ble Tribunal. Aggrieved by the orders of the learned Single Judge, the management has filed Writ Appeal No. 922/1988 and the same was also dismissed by an order dated 23-6-1988. In pursuance of the orders of the High Court of Andhra

Pradesh, the present reference is made to this Hon'ble Tribunal. It is submitted that the impugned order of disengagement is illegal and arbitrary. The petitioner made several representations but the Management have not considered the same. It is submitted that the termination is illegal, arbitrary and unwarranted, whereas the workmen appointed subsequent to the Petitioner's appointment were continued but the services of the petitioner were terminated. The alleged action is also violative of Section 25-H of Industrial Disputes Act. The Respondent has not maintained the seniority list and has not followed the procedure for retrenchment under Section 25-G of the Industrial Disputes Act. Ever since the date of termination, the Petitioner is unemployed and could not secure any alternative employment in spite of his efforts. The Petitioner is facing severe financial difficulties due to unemployment. There are no latches on the part of the petitioner ever since the disengagement in May, 1977. The petitioner has been making several representations to the Management. His candidature was also not considered for recruitment. It is therefore, prayed that the Hon'ble Court may be pleased to hold that the disengagement of the Petitioner with effect from 6-5-1977 as illegal, arbitrary and unwarranted and consequently pass an award directing the Respondent-Management to reinstate the Petitioner into service with all consequential benefits.

3. The averments of the counter filed by the Respondent read as follows :

It is submitted that the petitioner was engaged as Daily Rated Watchman during the period from 7-2-1976 to 4-5-1977 depending upon the exigency of work. The petitioner did not work continuously for 240 days. The provision of Sec. 25-F of the Industrial Disputes Act does not apply to the present case. The non-engagement of the petitioner is legal, valid and according to law. The Petitioner's services were engaged only on casual basis depending on the exigencies of work and as such the petitioner is not entitled for reinstatement regular appointment in the F.C.I. That apart the petitioner's name was not sponsored by Employment Exchange for considering for regular employment at that time. The Petitioner did not raise any dispute till 1987 and as such there is a delay of more than 9 years in raising the dispute. It is totally incorrect to say that since 1976 the Petitioner made several representations. In fact since 1976 till 1986 the petitioner never made any representation. The instructions issued in Headquarters Gazette Notification does not apply to the petitioner's case. The above dispute suffers from latches, and it cannot be treated as an Industrial Dispute. In view of what has been stated above the petitioner herein is not entitled to any relief and this Hon'ble Court may be pleased to dismiss the petition.

4. W.W.1 was examined for the petitioner and the petitioner's side was closed. Exs. W1 to W5 were marked for the Petitioner. M.W.1 was examined for the Respondent and the Respondent's side was closed. Exs. M1 and M2 were marked for the Respondent.

5. The point for adjudication is whether the action of the Management of Food Corporation of India, Kurnool (A.P.) in terminating the services of Sri S. Thahir Hussain Ex-Watchman is justified? If not, to what relief, the workman concerned is entitled to?

6. POINT.—The admitted facts of the case are that the Petitioner was appointed temporarily on daily rate wages on 7-2-1976 and worked in the Respondent Corporation till 5-5-1977 with intermittent breaks and the services of the petitioner were terminated from 5-5-1977. The case of the petitioner was that in spite of his repeated request, the Respondent Corporation did not reinstate him and therefore in 1986 he resorted to the Conciliation proceedings and the conciliation failed and that the Petitioner worked for more than 240 days in the year immediately prior to the date he was removed from service without complying with the mandatory provisions of Section 25-F of the I.D. Act and therefore he is entitled to be reinstated into service. The contention of the Respondent was that the Petitioner did not work for 240 days continuously and therefore the provisions of Section 25-F of the I.D. Act are not applicable to this case and the Petitioner is not entitled for re-instatement in this case. The question that is to be decided in this case is whether the petitioner worked for more than 240

days for him to claim that his removal from service amounts to retrenchment and that the retrenchment without complying with the provisions of Section 25 of the I.D. Act is illegal and therefore he is entitled to be reinstated. During the course of cross-examination MW-1 stated the Petitioner worked in the Respondent-Corporation from 7-2-1976 to 4-5-1977 with breaks of one or two days in every month of his service, though he denied the suggestion that the petitioner worked for 240 days continuously within the period of 12 months immediately prior to the date of his dismissal from service. It is clear from the above extracted portion of the evidence of M.W.1 that the Petitioner worked for about 14 months continuously with breaks of one or two days in every month of his service which is nothing but artificial breaks, which leads to the inevitable inference that the petitioner worked continuously for more than 240 days in view of the evidence of M.W.1 when he categorically deposed that the petitioner worked in the Respondent Corporation from 7-2-1976 to 4-5-1977 with breaks of one or two days in every month of his service. So it cannot but be held that the Petitioner worked continuously for more than 240 days within the period of 12 months immediately prior to the date of his dismissal from service. In such a case the mandatory provisions of Section 25-F of the I.D. Act would come into play as the removal of the petitioner from service amounts to retrenchment as defined in Section 2(o) of the I.D. Act, and the Respondent-Corporation is bound to issue one month's notice or pay the wages of one month in lieu of not issuing one month's notice and also the Respondent has to pay retrenchment compensation as contemplated under Section 25-F of the I. D. Act. It is admitted by MW-1 that at the time of dismissing the Petitioner from service one month's notice was not given to him, nor he was paid one month's salary in lieu of not issuing one month's notice and that the Petitioner also was not paid retrenchment compensation at that time. So it is clear from the evidence brought on record that the Petitioner-worked continuously for more than 240 days within the period of 12 months immediately prior to his removal from service and that the Respondent did not comply with the mandatory provisions of Section 25-F of the I. D. Act before retrenching the petitioner from a service. It is pertinent to note that in Ex. M-1 in a clarification dt. 7th September, 1977 for the office notification dt. 4-2-1976 issued by the Food Corporation of India, Head Office, New Delhi, it is stated that "it has also come to the notice that some persons have been appointed after 25-1-1976 on daily rate temporary basis without being sponsored beyond the Employment Exchange and have been continued beyond 89 days that since the continuance of such persons is in contravention of the statutory provisions of the Employment Exchange Act 1959 and the provisions in the Staff Regulations, the services of such persons should be terminated immediately and they may be paid simultaneous the retrenchment compensation if they have worked for 240 days or more during the period of last 12 months as per the provisions of I. D. Act". So in view of this notification also it is to be noted that the department is aware of the fact that the Respondent has to pay retrenchment compensation to the workmen who are to be removed from service when they worked for 240 days continuously. In the present case the Respondent Corporation did not comply with the mandatory provisions of Section 25-F of the I.D. Act in paying the retrenchment compensation. It is contended by the learned counsel for the Respondent that as against the judgement in W.A. No. 174/88 the Respondent Corporation filed a Civil Appeal No. 5178-79 of 1990 in the Supreme Court of India and in the order of Supreme Court in the said Civil Appeal, it is stated that "we are of the view that the impugned order of the High Court should be understood as a direction to the Government to consider the matter on the merits after hearing both sides and to pass an appropriate order, and not as a direction to make a reference without regard to the merits, the impugned order shall stand modified as indicated above. It is contended by the learned counsel for Respondent that that in view of the order of the Supreme Court in the said Civil Appeal the Government of India has to hear both sides before referring the matter to this Tribunal and that the Government of India did not give any opportunity of being heard to the Respondent Corporation before referring the matter to this Tribunal and therefore the reference in the present case is invalid under law. As seen from the counter filed by the Respondent Corporation, this plea was not taken and raised in the

counter. There is no evidence brought on record to show that the Government of India did not give an opportunity of being heard to both parties before referring the matter to this Tribunal. On the other hand it is to be noted that the order in Ex. M2 was dt. 31-10-1990 in the said Civil Appeal No. 5178-79/90. So it is clear from the documentary evidence in Ex. M2 and the evidence of M.W.1 when he deposed that as against the judgment in W.P. No. 18177/87 the Respondent Corporation filed Writ Appeal No. 174/88 on the file of the High Court of A.P. and the same was dismissed confirming the judgement in Writ Petitioner that as against the judgement in W.A. No. 174/88 the Respondent filed Civil Appeal No. 5178-79/90 on the file of the Supreme Court of India, that Ex. M2 is the photostat copy of the order dt. 31-10-1990 in the said Civil Appeal No. 5178-79/90 that the order in Ex. M2 was long subsequent to the date of the reference i.e. 29-4-1988, made by the Government of India, Ministry of Labour. So the contention raised by the learned counsel for the Respondent in this regard is of no avail to the Respondent Corporation. It is in the evidence of M.W.1 that after the judgement of the High Court in W.P. No. 18177 of 1987 the Government of India did not give an opportunity of being heard to the Respondent Corporation before referring the dispute to this Tribunal. It is to be noted that M.W.1 deposed that he has been working as Assistant Manager in the Respondent Corporation since 1958 and that he has been working at Kurnool since June, 1990. Admittedly the matter was referred by the Government of India, Ministry of Labour by its Order dt. 29-4-1988 by which time M.W.1 was not working in Kurnool office and so it cannot be said that MW-1 has got the personal knowledge whether the Government of India has given an opportunity of being heard or not to the Respondent Corporation before referring the matter to this Tribunal. No documentary evidence is filed for M.W.1 to say that he is speaking from out of the record available as he was not having the personal knowledge of the matter in respect of things that have happened prior to June 1990 in this case. So the statement of MW-1 that after the judgment of the High Court in W.P. No. 18893/87 the Government of India did not give an opportunity of being heard to the Respondent Corporation before referring the dispute to this Tribunal, cannot carry any weight. Therefore, I am of opinion that the contention raised by the learned counsel for the Respondent in this regard is of no help to the Respondent Corporation. So in view of my above discussion, I am of opinion that the petitioner is entitled for the relief of reinstatement with continuity of service but without back wages under the facts and circumstances of the case and in view of the admission made by the petitioner in his evidence as WW-1 that he may be reinstated without back wages. Hence I answer the point accordingly.

7. In the result an Award is passed directing the Respondent Corporation to reinstate the Petitioner into service with continuity of service, but without back wages. The Respondent Corporation is further directed to reinstate the Petitioner within one month from the date of publication of this Award failing which the petitioner is entitled to recover the wages from the date of publication of this Award. There will be no order as to costs under the facts and circumstances of the case.

Dictated to the Stenographer, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal this the 14th day of July, 1992.

G. KRISHNA RAO, Industrial Tribunal

Appendix of Evidence

Witnesses examined

for the Workmen.

WW 1 S. Thahir Hussain.

Witnesses examined for the Management :

MW 1 P. J Chella Doria

Documents marked for the Workmen

Ex. W1 7-2-76 Appointment order dt. 7-2-1976 issued to S. Thahir Hussain by the District Manager F.C.I., Kurnool.

Ex. W2 6-6-77 Service certificate dt. 6-6-77 issued to S. Thahir Hussain by the Asst. Manager (C) F.C.I., Thimmancherla.

Ex. W3 6-5-81 Photostat copy of the letter dt. 6-5-1981 of Dist. Manager, F.C.I., Kurnool.

Ex. W4 3-4-86 Representation dt. 3-4-86 made by S. Thahir Hussain to the Asst. Labour Commissioner (C) Hyderabad, Hyd.

Ex. W5 1-10-86—Failure of conciliation report dated 1-10-1986.

Ex. W6 Postal acknowledgement.

Ex. W7 Postal acknowledgement.

Ex. W8 25-1-89 Photostat copy of the office order nil by the District Manager, F.C.I., Kurnool A.P. to Sri. U. Ramanjeeneyulu, daily rated watchman.

Documents marked for the Respondent/Management.

Ex. M1 11-2-76 Photostat copy of the Circular No. 4-B/75 dt. 7th September, 1977 off-C.I. HO, New Delhi.

Ex. M2 31-10-90 Photostat copy of the order of the Supreme Court of India in Civil Appeal No. 5178-79/90.

नई दिल्ली, 28 जुलाई, 1992

का.आ. 2212.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के सबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निहित औद्योगिक विवाद में औद्योगिक अधिकरण तमिलनाडु मद्रास के पत्राट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-7-92 को प्राप्त हुआ था।

[संख्या एल-12012/183/91-आई आर (बी-III)]

सुभाष चन्द्र शर्मा, डेस्क अधिकारी

New Delhi, the 28th July, 1992

S.O. 2212.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Tamil Nadu, Madras, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on the 27-7-1992.

[No. L-12012/183/91 IR (BIII)]

S. C. SHARMA, Desk Officer.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMILNADU
MADRAS

Thursday, the 30th day of April, 1992

THIRU M. GOPALASWAMY, B.Sc., B.L.,

Industrial Tribunal

INDUSTRIAL DISPUTE NO. 45 OF 1991

(In the matter of the dispute for adjudication under section 10(1) (d) of the Industrial Disputes Act, 1947 between the workman and the management of State Bank of India, Madras.)

Between

The workman represented by

The General Secretary,

State Bank Workmen Staff Union,

62-A, Gangu Street, Egmore, Madras-600008.

And

The Chief General Manager,
State Bank of India, LHO.,
21, Rajaji Salai, Madras-600001.

REFERENCE :

Order No. L-12012/183/91-IR (B-III), dated 31-7-91.
Ministry of Labour, Government of India.

This dispute coming on for final hearing on Tuesday, the 7th day of April, 1992 upon perusing the reference, claim and counter statements and all other material papers on record and upon hearing the arguments of Tvl.D. Murugesan and R. Achuthan, Advocates appearing for the Workman and the Management being absent, and this dispute having stood over till this day for consideration, this Tribunal made the following

AWARD

This dispute between the workman and the management of State Bank of India, LHO, Madras-1 arises out of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of Tamil Nadu in its Order No. L.12012/183/91-IR.B.III, dated 31-7-1991 of the Ministry of Labour; for adjudication of the following issue :

“Whether the management of State Bank of India is justified in terminating the services of Shri P. Ramaswamy, Messenger/Driver with effect from 24-7-84? If not, to what relief the workman is entitled to?”

2. The Petitioner-worker states as follows: The Petitioner was given employment at the Regional Office, Coimbatore of the Respondent as Messenger-cum-driver on and from 21-10-1983. He has worked for 67 days in 1983 and 113 days in 1984. He was denied work from 28-4-1984 by the Regional Manager without giving reasons. Repeated requests by the Petitioner were of no avail. The Respondent-State Bank of India has been regularly appointing employees on a temporary basis and subsequently regularising them. The Petitioner was also appointed on a temporary basis on 21-10-1983 when he was 35 years old. He has served for 180 days efficiently. The Respondent has taken a decision to give regular appointment to temporary employees who have put in not less than 90 days of work on a temporary basis. However, the Respondent did not give effect to the said policy and failed to appoint the Petitioner in a permanent vacancy, even though he was called for an interview on 20-4-1988. The Respondent seems to have acted on a settlement between the Respondent and SBI staff Federation, reached on 17-11-87 prescribing certain conditions for making regular appointment of temporary employees. In that settlement, there seems to be a condition that a temporary employee who has crossed a certain age limit is not eligible to be appointed regularly. Such a clause on age in the settlement reached under section 18(1) of the I.D. Act. cannot abridge the right of the Petitioner to get regular appointment in terms of the I.D. Act. Petitioner raised a dispute under section 2-A of the I.D. Act before the Labour Commissioner (Central), New Delhi. But conciliation has failed.

3. The Respondent was served notice but has remained absent and hence it was set ex parte.

4. The point for determination that arises for consideration is as follows :

“Whether the management of State Bank of India is justified in terminating the services of Shri P. Ramaswamy, Messenger/Driver with effect from 24-7-84? If not, to what relief the workman is entitled to?”

5. The Petitioner has examined himself as WW-1. Exs. W-1 to W-6 were marked. The fact that the Petitioner was employed on a temporary basis by the Regional Office, Coimbatore of the Respondent-State Bank of India is admitted. Petitioner has worked on a temporary basis for 180 days only as revealed by Ex. W-1 certificate. In 1984, in which he was denied employment he has worked for 113 days as Messenger-cum-Driver. The Petitioner's application to the Conciliation Officer is marked as Ex. W-2. Conciliation Failure Report is Ex. W-4.

6. In the course of arguments, the Petitioner's learned counsel referred to Section 25-B coming under Chapter V-A of the I.D. Act, 1947, for the purpose of considering whether the Petitioner has to be deemed to have put in continuous service for one year or six months, as the case may be.

7. The State Bank of India and the Staff Association have entered into a Section 18(1) Settlement which is incorporated in Ex. W-6 circular. Under this settlement, temporary employees who have put in a minimum of 70 days and more of service in the course of three years after 1-7-1975 become eligible to be considered for permanent appointment. But the settlement also provides upper age limit of 26 years as on the date of the initial temporary appointment. This Petitioner who had completed 35 years of age when he was temporarily appointed (initially) on 21-10-1983 becomes disqualified by this age restriction fixing the maximum age at 26. I believe that the Industrial Disputes Act does not over-ride the requirement of age qualification which is fixed according to law and in terms of a settlement under section 18(1) of the Industrial Disputes Act.

8. The Petitioner's learned counsel referred me to the decision in Manickam-versus-State Bank of India decided by the Madras High Court and reported as 1991—I—L.L.J. 547. In that case, the worker relied upon discrimination between him and another worker both of whom were similarly placed, in the matter of absorption of the worker in a permanent post. The question of age qualification was not an issue in that case. I therefore hold that in the instant case before us the question of age bar is a material one and that it has to be answered against the Petitioner herein. As a person who has completed 26 years of age on the date of initial appointment in a temporary capacity, the Petitioner becomes ineligible for being appointed in a permanent post in terms of Ex. W-6 settlement which has to be upheld as a valid settlement under the I.D. Act. Therefore I hold that the Petitioner is not entitled to be reinstated or appointed in a permanent post, under the Respondent-Bank. This point is answered accordingly.

9. In the result, industrial dispute is dismissed. No costs.

Dated, this 30th day of April, 1992.

THIRU M. GOPALASWAMY, Industrial Tribunal.

WITNESSES EXAMINED

For Workman :

W.W 1 — Thiru P. Ramasamy.

For Management : None

DOCUMENTS MARKED

For Workman :

Ex. W-1/12-8-88 — Certificate of temporary service issued to the workman Thiru P. Ramasamy (Xerox copy)

W-2/25-8-88 — Letter from the workman to the Chief Labour Commissioner (Central), New Delhi regarding his re-employment in the Management-Bank (xerox copy)

W-3/8-4-89 — Letter from the workman to the Asstt. Labour Commissioner (Central)-II, Madras. (Xerox copy)

W-4/27-5-91/3-6-91—Conciliation Failure Report (Xerox copy)

W-5/4-10-78 — Award in I.D. 11/77 (xerox copy)

W-6/26-12-87 — Circular No. 52 of State Bank's Staff Union (Madras Circle), Madras regarding settlement on absorption of temporary employees (Xerox copy)

For Management : Nil

नई दिल्ली, 28 जुलाई, 1992

का.प्र. 2213.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार साऊथ मालाबार ग्रामीण बैंक के प्रबंधन के संबद्ध नियोक्तों और उनके कर्म-कारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में अम न्यायालय, कोझीकोड के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-7-92 को प्राप्त हुआ था।

[संख्या एल-12012/271/90-आई आर (बी-III)]

सुभाष चन्द शर्मा, डेस्क अधिकारी

New Delhi, the 28th July, 1992

S.O. 2213.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Labour Court, Kozhikode as shown in the Annexure in the industrial dispute between the employers in relation to the management of South Malabar Gramin Bank and their workmen, which was received by the Central Government on the 27-7-92.

[No. L-12012/271/90-IR (B.III)]

S. C. SHARMA, Desk Officer

ANNEXURE

IN THE LABOUR COURT, KOZHIKODE, KERALA STATE

Dated this the 9th day of July, 1992

PRESENT:

Shri K. G. Gopalakrishnan, B.A., B.L., Presiding Officer
I.D. (C) 6/91

BETWEEN

The Chairman, South Malabar Gramin Bank, Head
Office, Malappuram-676505, Kerala .Management

AND

Shri C. K. Chandran S/o Kunhiraman, Chottiyar
Kandy House, P.O. Perambra, Dist. Kozhikode,
Kerala—Workman.

REPRESENTATIONS:

Sri K. V. Sachidanandan, Advocate, Calicut—For Man-
agement.

Sri P. M. Padmanabhan, Advocate, Calicut—For Work-
man.

AWARD

By the Order No. L-12012/271/90-IR.B.III dated 8-10-1991 the dispute between the management of South Malabar Gramin Bank and their workmen in connection with the termination of service of a Messenger by name C. K. Chandran was referred to this Court for adjudication by the Government of India under Section 10 of the Industrial Disputes Act.

2. After the receipt of the reference order in this court both the management and the workman entered appearance and filed claim statements. The brief averments in the statement filed by the workman are as follows:—The workman was taken in the service of the management bank as Messenger on 11-3-1986 on daily wage basis and as Messenger he has worked in various branches of the management bank. While so without assigning any reason what-so ever his service was terminated by the bank on 5-8-1989. At the time of this termination the workman has worked altogether 322 days. Thus the workman having worked for more than 240 days he has become a permanent employee of the manage-

ment bank and hence the management has no right to terminate his service like this. If at all the service of the workman has to be terminated that can be done only as provided in Section 25F of the Industrial Disputes Act by giving the workman one months notice pay in advance and retrenchment compensation. As this has not been done the termination is illegal and as such the worker is entitled to be reinstated with back-wages and continuity of service as if there is no termination. Hence an award may be passed directing the management bank to reinstate this worker in service with backwages from 5-8-1989 and with continuity of service.

3. The brief averments in the statement filed by the management are as follows:—It is true that the workman has worked as a Messenger in the bank on daily wage basis. But the allegation in the statement filed by him that he has altogether worked 322 days is false. In fact he has worked only just 215 days that too intermittently. Thus as he has worked only 215 days the management has every right to terminate his service as the Industrial Disputes Act will have no application in such cases. Hence an award may be passed upholding these contentions of the management.

4. No oral evidence has been adduced. Documentary evidence consists of Ext. M1.

5. The following points are formulated for decision:

- (1) Whether the action of the management bank terminating the service of the workman is legal?
- (2) Whether the workman is entitled to any relief?
- (3) Result?

6. Point No. 1:—It is the admitted case of both sides that the workman started working as a Messenger in the management bank with effect from 11-3-1986 on a daily wage basis. It is also admitted case that his service was terminated with effect from 5-8-1989. Now this action of the management terminating his service is questioned by the workman contending that he has worked for more than 240 days in a year and as such his service can be terminated only as provided in section 25F of the Industrial Disputes Act. This case of the workman that he has worked for more than 240 days in a year is disputed by the management contending that altogether he has worked only 215 days. But this stand of the management is absolutely wrong since Ext. M1 which is a statement filed by the management showing the number of days he has worked clearly reveals that from 12-8-1988 to 5-8-1989 he has worked 215 days. Or in other words Ext. M1 shows that during 12 months in between 12-8-1988 to 5-8-1989 the worker has actually worked 215 days excluding Sundays and other holidays. Now the Supreme Court has held in the decision reported in 1986-LIC-98 while counting 240 days for the purpose of section 25B, the intervening holidays and Sundays also should be taken into account. This legal proposition is not disputed by the counsel for the management. In any event between 12-8-1988 to 5-8-1989 definitely there will be 40 Sundays and when those 40 days are also added to 215 days viz., the days he has actually worked it will be more than 240 days. Thus from the document produced by the management itself it is evident that the workman has worked for more than 240 days in a year viz., from 12-8-1988 to 5-8-1989. Thus as the worker has worked for more than 240 days in a year he will be deemed to have one year continuous service in view of Section 25B of the Industrial Disputes Act and as such his service can be terminated only as provided in Section 25F of the Industrial Disputes Act by giving him one month's notice pay and retrenchment compensation. Admittedly this statutory provision has not been complied with before terminating his service. So it has to be held that the action of the management terminating the service of the workman is illegal.

7. Point No. 2:—Now it is found in answer to Point No. 1 that the action of the management terminating the service of the workman with effect from 5-8-1989 is illegal since it being in violation of Section 25F of the Industrial Disputes Act. Now the legal position has been well-settled by series of decisions that an order of termination without complying

with section 25F of the Industrial Disputes Act will be void in law and hence in such cases the employee is entitled to be reinstated with backwages and continuity of service as if there is no termination at all. Hence as stated earlier the service of the workman was terminated without complying with Section 25F of the Industrial Disputes Act. So much so the workman is entitled to be reinstated with backwages and continuity of service as if there is no termination at all.

8. Point No. 3:—In the result an award is passed directing the management bank to reinstate the workman in service with backwages and continuity of service.

9. This award will come into force 30 days after its publication in the Official Gazette.

K. G. GOPALAKRISHNAN, Presiding Officer

APPENDIX :

Witnesses examined on either side :—
NIL.

Documents marked on the side of the Workman :—
NIL.

Documents marked on the side of the Management:—

Ext. M1—Details of days worked in various branches of the management concern by the worker.

नई दिल्ली, 29 जुलाई, 1992

का आ 2214—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, भारतीय स्टेट बैंक के प्रबंधन के मन्त्र नियंत्रक और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, कोलम के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-7-92 को प्राप्त हुआ था।

[संख्या एन-12012/54/90-आइ आर (बी-III)]

मुभाय चन्द्र शर्मा, डेस्क अधिकारी

New Delhi, the 29th July, 1992

S.O. 2214.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Kollam as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on the 28-7-1992.

[No. L-12012/54/90-IR(B-III)]

S. C. SHARMA, Desk Officer

ANNEXURE

IN THE COURT OF THE INDUSTRIAL TRIBUNAL, KOLI AM

(Dated, this the 23rd day of July, 1992)

PRESENT.

Sri C. N. Sasidharan, Industrial Tribunal.

IN

INDUSTRIAL DISPUTE NO. 126/90 BETWEEN

The Regional Manager, Region II, State Bank of India, Regional Office, Trivandrum-695033.

(By Sri G. Krishnan Nair and Sri R. Somanathan, Advocates, Trivandrum).

AND

Sri Thomas Jose, Padiyara House, Manmala P.O., Kottayam District, Kerala.

(By S/S. M. Ramachandran and P. V. Abraham, Advocates, Ernakulam).

AWARD

This industrial dispute has been referred for adjudication by Government of India as per Order No. L-12012/54/90-IR.B.III dated 25-6-1990

The issue for adjudication is :

SCHEDULE

‘ Whether the action on the part of the management of State Bank of India in dismissing Sri Thomas Jose as Clerk w.e.f. 10-6-1987 is legal and justifiable ?

If not, to what relief the workman is entitled to ?”

2. Sri Thomas Jose, the workman in this case, was dismissed from the State of India. The contentions of the workman are briefly as under : It is stated in the claim statement of the workman that he had been employed as Typist-cum-Clerk since the year 1975. He had been discharging his duties faithfully and his service record would reveal that his service under the management had been blemished less and clean. He had always fared well in the deposit mobilisation work. But during October 1985 he had become victim of an indiscretion for a moment in the circumstance of pressing necessity. He had taken a sum of Rs. 3,000 from an account intending to recoup it immediately. He had owned up the action and had recouped the loss. It is stated that he had no idea to make any wrongful loss. The management however resorted to disciplinary action and a formal enquiry had been held. The enquiry officer reported that the workman is guilty. He did not raise any frivolous or untenable contentions in the enquiry. Though the workman prayed and pleaded for mercy to forgive the solitary lapse, the management imposed the capital penalty and as per order dated 6-5-1987 he was dismissed from service. The appeal filed by him was also rejected. According to the workman approach of the management was unjustified. The management has not considered his past service conduct and other circumstances in imposing the punishment of dismissal. He has further stated that he has not secured any alternate employment. According to him he deserves a chance to be reinstated in service with all benefits because he had committed a lapse without any premeditation.

3. The management while opposing the case of the workman has advanced their contentions in the reply statement which are briefly as under : On 19-10-1985 he workman was officiating as cash officer of the Kangazha branch of the management Bank one Sri P. S. Haridas was having S. B. Account No 36 in that branch. This account was in operative for a long time. On 19-10-1985 the workman himself prepared a S.B. withdrawal slip for Rs. 3,000 from the Account No. 36, forged the signature of the customer Sri Haridas, himself posted the withdrawal in the ledger and with that forged document he withdrew a sum of Rs. 3,000 and misappropriated the money for himself. Procedure to be followed in debiting inoperative account has not been followed by him in his motivated and calculated action to defraud the Bank. The external auditors of the Bank on 20-10-1986 found difference of Rs. 3,000 between the S.B. ledger balance and general ledger balance which was located in S.B. Account No 36. The fraudulent withdrawal of the workman was revealed on further scrutiny. He had admitted before the enquiry officer, the acts and the amount of Rs. 3,000 with interest was also recovered. The above acts of the workman amounts to gross misconduct in terms of paragraph 521(4)(J) of the Sastri Award read with paragraphs 18—28 on Desai Award. Hence disciplinary action has been initiated against him. An enquiry has been ordered and in the enquiry the workman admitted the charge and pleaded mercy. The enquiry officer found the workman guilty of the charges. Considering the gravity of the charges the disciplinary authority

imposed the supreme penalty of the dismissal without notice. He was afforded a personal hearing also. The appeal filed by the workman before the appellate authority was also rejected. According to the Bank all actions taken by it are legal, valid and proper. The workman has misused the confidence and trust reposed on him by the Bank. The alleged previous conduct, length of service etc. cannot be termed extenuating circumstance when considering the admitted and proved charges committed by the workman. Public confidence enjoyed by the Bank will be dwindled if the Bank is manned by persons like the workman. There is no mitigating circumstances for not penalising the employee or for imposing any lesser punishment. The punishment is not at all disproportionate considering the admitted charges proved against the workman. According to the management the workman is not entitled to reinstatement or any other relief in this reference.

4. The workman was dismissed from service of the management on the basis of a domestic enquiry finding. The validity of the domestic enquiry was not disputed by the workman. The enquiry report has been marked as Ext. M1 without examining the enquiry officer as consented to by the workman. As matters stand now the only question to be considered is as to whether any interference is called for from this Tribunal in the punishment of dismissal imposed by the management.

5. The only question now remains for consideration is whether the punishment of dismissal inflicted by the management is excessive or disproportionate to the gravity of the misconduct proved against the workman. The learned counsel for the workman would contend that the workman who had exemplary record of service for 16 years and had received appreciation of the work he had done, committed the offence in a weak moment and he had not thought of making any personal gain at the expense of others. It was also submitted that the workman had admitted his guilt, made good the amount and pleaded for mercy. According to the learned counsel the workman was never charge sheeted for any misconduct earlier and also that he had not raised any frivolous or false contentions in the enquiry and that the management had any financial loss. In these circumstances the learned counsel would contend that the extreme punishment of dismissal is too excessive and the management has not considered any of these circumstances while awarding punishment. On the other hand the learned counsel for the management would argue that the workman while holding an office of trust has misused the confidence and trust reposed on him by the Bank and the continuance of the workman who had forged the signature of a customer and misappropriated money if allowed to continue in a banking institution, public confidence enjoyed by the Bank would be dwindled. According to the learned counsel the past unblemished service, the admission of the guilt and the repayment of the amount misappropriated are not at all mitigating circumstances to award a lesser punishment considering the gravity of the misconduct proved against him.

6. The misconduct of misappropriation of money by forging the signature of a customer by the workman is not in dispute. He has admitted the misconduct, explained the circumstances that in a weak moment of pressing necessity he had taken Rs. 3,000 from an account and pleaded for mercy even before the management ordered a domestic enquiry. As a matter of fact at the time of issuing charge memo there was no loss to the management. The management has no case that the matter came to the knowledge of the account holder from whose account money was drawn by the workman. In the domestic enquiry the enquiry officer found the workman guilty of the charges on the admission of the workman about the misconducts. The admission of the misconduct, remittance of the amount misappropriated and pleading for mercy show that the workman had regretted about his guilt. That also shows his remorsefulness. Further, by making good the amount after admitting the misconduct the workman earnestly wanted to avoid any monetary loss to the Bank and also to save the good image of the Bank. It is true that admitting the misappropriation and remitting back money misappropriated are not mitigating circumstances for awarding a lesser punishment. But the fact remains that this workman admitted his guilt immediately after the offence and

made good the amount and pleaded for mercy. This is the first offence of the delinquent who is having about 16 years of unblemished service. Having regard to all these circumstances I would hold that the extreme punishment of dismissal is too harsh and not justified.

7. On an anxious consideration of all the aspects particularly the difficulty in getting a job in these days I am of the view the interest of justice would be met by affording the workman one more opportunity to reform himself and to prove his worthiness, integrity and loyalty. However, the workman cannot be let off without any punishment considering the gravity of the offence. He has been out of employment since 1987. It seems to be that the pain and anguish suffered by him due to the loss of job and denial of back wages and other monetary benefits for the broken period of service would be adequate punishment for the misconduct in question. Subject to that he should be directed to be reinstated in service. However, his past service shall be counted for all other benefits. In this regard I make it clear that the workman shall not be given a posting in the Kangazha branch where he was working or in any other nearby branch of the management Bank. He shall be given a posting in a distant place for sometime so that his past misconduct could be kept out of the knowledge of the general public and thereby the interest of the Bank can be protected. It is also made it clear that he shall be reinstated as Typist Clerk only and not be entrusted with cash.

8. The above view is supported by a decisions of the Supreme Court in *Scooter India Ltd. V. Labour Court, Lucknow* (AIR 1989 SC. 149) In that case the workman was charge sheeted as per charge memos on three different occasions and the charges framed against him pertained to acts of major misconduct. All the charges were held proved in the enquiry. However, the Labour Court directed the workman to be reinstated in service with 75 per cent back wages. The High Court sustained the Award of Labour Court by adverting to Section 6(2A) of U.P. Industrial Disputes Act (1947) which is analogous to Section 11-A Industrial Disputes Act, 1947. The matter finally came before Apex Court and the court confirming the Award of Labour Court held thus in paragraph 7 last :—

"It cannot therefore be said that the Labour Court had exercised its powers under Section 6(2A) of the Act in an arbitrary manner and not in a Judicial manner. The Labour Court has taken the view that justice must be tempered with mercy and that the erring workman should be given an opportunity to reform himself and prove to be a loyal and disciplined employee of the petitioner company. It cannot therefore be said that merely because the Labour Court had found the enquiry to be fair and lawful and the findings not to be vitiated in any manner, it ought not to have interfered with the order of termination of service passed against the respondent in exercise of its powers under Section 6(2A) of the Act."

The above decision according to me equally applies to the facts and circumstances of the instant case.

9. The learned counsel for the management placed reliance on two decisions in support of the argument that the punishment of dismissal does not call for any interference. The first authority cited is of the High Court of Gujarat in *Gujarat State Road Transport Corporation V. Jamnadas Bechav Bhai* (1983 LAB IC 1349). In that case a bus conductor was found collecting money without issuing ticket. The court found that the dismissal was proper. This case according to me has no application here because in the instant case the workman admitted the guilt and pleaded for mercy after having made good the amount. The second authority cited is the decision of the Calcutta High Court in *Wimco Sramik Union V. Seventh Industrial Tribunal*. In that case the workman was dismissed for theft which was proved in the enquiry. The court found that no interference was called for on the ground that the workman had rendered long period of unblemished service and stolen property was worth only Rs. 150. This decision also according to me is distinguishable. The facts are not similar. The workman before me had taken the amount in a weak moment due to pressing necessity and

later admitted the misconduct, remitted the amount and prayed for mercy. In the light of the decision of the Apex Court (Supra) it is only proper to afford an opportunity to the workman to reform himself and prove to be a disciplined and loyal employee. Hence the decisions of Gujarat High Court cited by the learned counsel for management have no application here.

10. In the result, the reference is answered by passing an Award quashing the order of termination and directing the management to reinstate Sri Thomas Jose in the service of the Bank in the terms and conditions stated in paragraph 7 above.

C. N. SASIDHARAN, Industrial Tribunal

APPENDIX

Document marked on the side of the Management :
Ext. MI-series, Enquiry proceedings.

नई दिल्ली, 22 जुलाई, 1992

का या 2415—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, सैमर्स भारत कोकिंग को लि का औरा क्षेत्र की बरारी कोलियरी के प्रबंधन के संबंध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम, (सं 2) धनबाद के पंचपट की प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-92 को प्राप्त हुआ था।

[संख्या एन-24012(60)/82-डी-4 (बी)]

बी के वेणुगोपालन, डेस्क अधिकारी

New Delhi, the 22nd July, 1992

S.O. 2215.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Bararee Colliery Bhowra Area of M/s. Bharat Coking Coal Ltd. and their workmen, which was received by the Central Government on 20th July, 1992.

[No. L-24012(60)/82-D.IV(B)]

V. K. VENUGOPALAN, Desk Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESNT

Shri B. Ram, Presiding Officer.

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act, 1947

Reference No. 38 of 1983

PARTIES :

Employers in relation to the management of Bararee Colliery, Bhowra Area of B.C.C.L., District Dhanbad

AND

Their workmen.

APPEARANCES :

On behalf of the workmen—Shri S. Bose, Secretary, R.C.M.S.

On behalf of the employees—Shri B. Joshi, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dated, Dhanbad the 10th July, 1992

AWARD

The Government of India, Ministry of Labour & Rehabilitation in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-24012/60/82/D.IV(B), dated, the 23rd April, 1983.

SCHEDULE

"Whether the demand of the workmen of Bararee Colliery, Bhowra Area of BCCL, District Dhanbad that Shri Dadanji Pandey should be regularised as Dumper Operator-cum-Mechanic in category VI from 1976 as per NCWA is justified? If so, to what relief is the said workman entitled?"

2. Soon after the receipt of the order of reference notices were duly served upon the parties. Both the parties appeared and filed their respective W.S. documents etc. Thereafter several adjournments were granted to the parties. Subsequently at the stage of evidence both the parties appeared before me and filed a petition of compromise. I heard both the parties on the said petition of compromise and do find that the terms contained therein are fair, proper and beneficial to both the parties. Accordingly I accept the said petition of compromise and pass an Award in terms thereof which forms part of the Award as annexure.

B. RAM, Presiding Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 AT DHANBAD

Reference No 38/83

Employers in relation to the Management of Bararee Colliery,

AND

Their workmen.

Petition of Compromise

The humble petition on behalf of the parties to the above reference most respectfully sheweth :—

1. That the above dispute has been amicably settled between the parties on the following terms :—

- That the demand of the concerned workman ^{Sr} Dadanji Pandey for his upgradation from category-V to Category-VI has already been accepted with effect from 1st January, 1981 and he has promoted to the Technical & Supervisory Grade 'C' with effect from 1st July, 1991 from Category-VI. In view of the mentioned promotions given to the concerned workman, he has no further grievance of any kind against the management.
- That the management will pay as Cost of Rs. 500 (Rupees five hundred) only to the union for certain legal expenses relating to the case.
- That the concerned workman Sri Dadanji Pandey will not claim in future difference of wage from 1976 to 1st January, 1981 or for any other relief arising out of the present dispute.

2. That in view of the above settlement, there remains nothing to be adjudicated.

Under the facts and circumstances stated above, the Hon'ble Tribunal will be graciously pleased to accept the Settlement as fair and proper and be pleased to pass the Award in terms of the Settlement.

For the workman.

1. G. D. Pandey,
Vice President RCMS/
Member Joint Committee.

2. Witnesses :

1. Sd/- Illegible
2. Sd/- Illegible

For the Employers

Sd/-

1. A. Kalam,
Dy. CMF, Bararee Colliery.

Presiding Officer
CGIT-II
(DHANBAD)

2. B. Prasad,
Dy. CPM, Bhowra Area.

नई दिल्ली, 22 जुलाई, 1992

का.मा. 2216—औद्योगिक विवाद अधिनियम, 1947 (1947 की 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मैमर्स मैन्डूल् कोलफील्ड्स लि. की गिरिडीह कोलियरी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, (सं 1) धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-7-92 को प्राप्त हुआ था।

[संख्या एल-20012(37)/89-आई आर (कोल-1)]

वी.के. वेणुगोपालन, डेस्क अधिकारी

New Delhi, the 22nd July, 1992

S.O. 2216.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 1), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Giridih Colliery of M/s. Eastern Coalfields Ltd. and their workmen, which was received by the Central Government on the 17-7-92.

[No. 20012(37)/89-IR (Coal-I)]

V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under Sec. 10(1)(d) of the
Industrial Disputes Act, 1947

Reference No. 188 of 1989

PARTIES :

Employers in relation to the management of Giridih
Colliery of M/s. Central Coalfields Ltd.

AND

Their workmen.

PRESENT :

Shri S. K. Mitra, Presiding Officer.

APPEARANCES :

For the Employers—Shri R. S. Murthy, Advocate.

2020 GI/92—7

For the Workmen—Shri B. Lall, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dated, the 10th July, 1992

AWARD

The present reference arises out of Order No. L-20012/37/89-I.R. (Coal-I), dated, the 15th November, 1989 passed by the Central Government in respect of an industrial dispute between the parties mentioned above. The subject matter of the dispute has been specified in the schedule to the said order, and the said schedule runs as follows :

"Whether the supersession of Shri Narayan Singh, Foreman of Giridih Collieries by four of his juniors by the management of Giridih Colliery of C.C. Ltd., P.O. Beniadih, Dist. Giridih is justified? If not, to what relief is the workman concerned entitled?"

2. The dispute has been settled out of Court. A memorandum of settlement has been filed in Court. I have gone through the terms of settlement and I find them quite fair and reasonable. There is no reason why an award should not be passed on the basis of terms and conditions laid down in the memorandum of settlement. I accept it and pass an award accordingly. The memorandum of settlement shall form part of the award.

3. Let a copy of this award be sent to the Ministry as required under section 15 of the Industrial Disputes Act, 1947.

S. K. MITRA, Presiding Officer

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. 1, DHANBAD

Ref. No. 188/89

PARTIES :

Employers in relation to the Management of Giridih
Area of Central Coalfields Ltd. P.O. Beniadih,
Dist. Giridih.

AND

Their Workmen.

JOINT COMPROMISE PETITION OF EMPLOYERS

AND WORKMEN

The above mentioned Employers and the workmen most respectfully beg to submit jointly as follows :—

(1) That the employers and the workmen have jointly negotiated the matter covered by the above dispute with a view to arriving at a mutually acceptable and amicable settlement.

(2) That as a result of such mutual negotiations, the Employers and the workmen have mutually agreed to settle the matter on an overall basis on the following terms :—

(a) It is agreed that the workmen concerned Sri Narayan Singh Foreman will be promoted to the post of Foreman-in-charge within fifteen days of this joint compromise petition being accepted by this Hon'ble Tribunal prospectively.

(b) It is agreed that in addition the workman concerned shall be given notional seniority in the post of Foreman-in-Charge from the date his juniors were promoted w.e.f. 21-6-1988 and that for the period notional seniority the workman concerned shall not be entitled to any arrear or monetary benefits.

(c) It is agreed that this is an overall settlement in full and final settlement of all the claims of the workman and sponsoring union arising out of the above reference.

(3) That the Employers and the workmen hereby jointly declare and confirm that they consider the above terms of settlement as fair, just and reasonable to both the parties.

In view of the above, the Employers and the workmen jointly pray that the Hon'ble Tribunal may be pleased to accept this joint compromise petition and give an award in terms thereof and thereby dispose of the above reference.

Sd/-

(N. K. Singh),

General Manager,

Giridih Area,

Central Coalfields Limited

For and on behalf of Employers

Sd/-

(Narayan Singh),

Workman concerned.

Sd/-

(R. K. Lal),

Personnel Manager,

Giridih Area,

Central Coalfields Limited,

For and on behalf of Employers.

(B. Lal),

Advocate,

For Employee.

Date 8-7-92

(Bal S. Murthy)

Advocate,

For Employers.

नई दिल्ली, 21 जुलाई, 1992

का.प्र. 2217—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूच में, केन्द्रीय सरकार से, भारत कोकिंग कोल लि., का भुरुंगिया प्रोजेक्ट के प्रबंधन के संबंध में निर्यात और उनके कर्मचारियों के बीच, अनुबंध में निरिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 2), धनबाद को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-7-92 को प्राप्त हुआ था।

[संख्या एल-20012(267)/86-D.III(A)]

वी. के. वेणुगोपालन, डेस्क अधिकारी

New Delhi, the 24th July, 1992

S.O. 2217.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Bhurungiya Project of M/s. Bharat Coking Coal Ltd. and their workmen, which was received by the Central Government on the 22nd July, 1992.

[No. L-20012(267)/86-D.III(A)]

V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri B. Ram, Presiding Officer.

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act, 1947

Reference No. 114 of 1987

PARTIES :

Employers in relation to the management of Bhurungiya Project of M/s. Bharat Coking Coal Limited,

AND

Their workmen.

APPEARANCES :

On behalf of the workmen—Shri S. Bose, Secretary, R.C.M.S. Dhanbad.

On behalf of the employers—Shri B. Joshi, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dhanbad, the 13th July, 1992

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012(267)/86-D.III(A), dated, the 3rd April, 1987.

SCHEDULE

"Whether the demand of Rashtriya Colliery Mazdoor Sangh that the management of Bhurungiya Project of Messrs. Bharat Coking Coal Limited should re-instate in service their workman, Shri Ram Kapil Mistry, Mason who was dismissed from service in August, 1982, is justified? If so, to what relief is this workman entitled?"

2. The present reference has been heard afresh in the light of an order of remand by the Hon'ble Patna High Court passed in CWJC No. 1350/1990(R). It so happened that one Shri Ram Kapil Mistry the concerned workman was charge-sheeted for misconduct and a domestic enquiry was held holding him guilty of the charges. He was ultimately dismissed from the service. During the course of hearing the fairness of domestic enquiry was not challenged by the workman. Naturally argument was heard on merit. But while hearing the case on merit the then learned Presiding Officer framed one of the points for decision as to whether the departmental enquiry conducted by the CBI from Patna Office as Presenting officer was illegal? This issue was held in affirmative. The management invoked the Writ Jurisdiction of the Hon'ble Patna High Court on the ground that the domestic enquiry after having been held to be illegal, the management should have been given a chance to prove the charges against the concerned workman. The Hon'ble Court allowed the Writ application quashing the award and remitted back the matter to this Tribunal with direction to afford an opportunity to the petitioner management to adduce evidence in support of its case. Similar direction by the same order was issued that the workman be also allowed to adduce evidence, if any. In the result as per direction of the Hon'ble Court the parties were called upon to adduce evidence. Two witnesses have been examined, one for the management and the concerned workman examined himself as WW.1.

3. According to the W.S. the concerned workman claimed himself to be a permanent workman in the capacity of mason engaged in Damodar Colliery of Area No. I of M/s. BCCL. After sometimes he was transferred to Madhuband colliery in the same area No. I. The W.S. further states that the concerned workman was again transferred to Bhurungiya Project under Area No. III and while he was so transferred to Bhurungiya Project a charge-sheet dated 6th April, 1977 was served upon him under the signature of Project Manager,

Bhurungiya Project Manager Area No. III for certain misconducts said to have been committed by the concerned workman while working in Damoda colliery in Area No. 1. The concerned workman submitted his reply on 13th April, 1977. The Project Manager, Bhurungiya Project without considering his jurisdiction to issue charge-sheet started a departmental enquiry which was conducted by the officer of CBI from Patna office as Presenting Officer which was illegal and without jurisdiction. The enquiry officer submitted report which was accepted by the management and ultimately the concerned workman was dismissed from service by letter dated 16th August, 1982 under the signature of General Manager, Mohuda Area No. II. On these grounds it has been prayed that the concerned workman should be reinstated and should be treated to have been continuing in the employment and he should also be paid full back wages for the entire period of forced idleness.

4. The management also filed W.S. stating therein that the concerned workman committed serious acts of misconduct while working at Damoda colliery. He was issued charge-sheet by competent authority. The workman submitted reply to the charge-sheet admitting his guilt. A proper and fair enquiry was held in which he was found guilty and ultimately dismissed from service by a letter of dismissal dated 16th August, 1982. While giving parasive reply it was stated that CBI had simply presented the case of the management in the departmental enquiry which was perfectly in order and lawful. In this way it has been prayed that the concerned workman has got no claim and the award be passed accordingly.

5. Now in the light of the fresh evidence adduced on behalf of the management we have to see whether the management has been able to prove the charges against the concerned workman. The photo copy of the charge-sheet is Ext. M-1. In the charge-sheet it has been alleged that the concerned workman Shri Ram Kapil Mistry was running a benami contract in the name of his son Shri A. Kumar and that he had signed work order as A. Kumar. He was also alleged to have received payment against two contracts and impersonated as A. Kumar and thus failed to maintain devotion of duty and integrity. He was thus charged for dishonesty and fraud in connection with Company's business amounting to misconduct under clause 18(1)(a) of the Standing Orders of Damoda colliery. This charge-sheet was issued by the Project Officer Bhurungiya Project where the concerned workman was lastly transferred. The learned counsel for the workman submitted in BCCI administration each area is under the administrative control of the Area G.M. and he is the authority to issue charge-sheet. The charge-sheet should have been issued by the General Manager of Damoda colliery of Area No. I where the alleged occurrence had taken place and the Project Officer of Bhurungiya Project of Area No. III had no business or authority to issue chargesheet and hence it was without jurisdiction. It was also submitted that the Project Officer Bhurungiya Project was not in receipt of any order from higher authority to issue chargesheet and this being the position the very issuance of charge-sheet was illegal and without jurisdiction and the concerned workman should not have been proceeded against on the basis of illegal chargesheet. Contrary to that the learned counsel for the management submitted that issuance of chargesheet by the project Manager, Bhurungiya Project was not an illegality and at best that may be called an irregularity. I think the contention raised by the learned counsel can be appreciated in the sense that the concerned workman had already been transferred to Bhurungiya Project. While being posted at Damoda colliery the issuance of chargesheet by any other Area Manager would have been an illegality. The concerned workman had replied to the chargesheet (Ext. M-2) which will be dealt with later on.

6. A domestic enquiry was conducted against charges and admittedly an officer in the rank of CBI had acted as representing officer. The representing officer is just like a Public Prosecutor in a criminal trial and he acts for and on behalf of the State. Similarly in the instant case the Inspector had represented the case of the management. The very presence of CBI Officer in an enquiry has been deprecated and termed as violative of the basic norms of disciplinary proceedings. At this stage I would like to refer the evidence of MW-1 Shri P. K. Roy, the enquiry officer. He stated that during the course of enquiry no objection was raised nor any

petition was filed against the Presenting Officer. He also stated that he had enquired into the matter on the basis of the Standing Orders of Bhurungiya Project. He further stated that normally departmental enquiry is conducted by the officer of the management and the presenting officer also belongs to the management. According to the witness he had enquired into the matter on the basis of the standing orders of Bhurungiya Project. The question is as to why he should be permitted to conduct the enquiry according to the standing orders of Bhurungiya Project when the misconduct was alleged to have been committed in Damoda colliery. In the instant domestic enquiry the CBI Inspector had presented the case of the management before the Enquiry Officer and what to talk of his mere presence. The learned counsel for the workman has placed his reliance upon an authority reported in IFLR Vol. 57 at page 737 (B. C. Basak-vers-Industrial Development Bank of India and others). This authority was cited even before the Hon'ble High Court, Patna Ranchi Bench and the Hon'ble Court has been pleased to hold that the aforesaid authority was not identical to the instant case. In that view of the matter any further appreciation of the authority stands concluded so far this Tribunal is concerned. However, the parties have been allowed to adduce evidence and now in the light of the fresh materials in the shape of evidence this Tribunal has to examine as to how far the management has been able to prove the charges against the concerned workman.

7. It is alleged that the concerned workman had been taking benami contract work in the name of his son Shri A. Kumar who was a minor. Under the law a contract entered into by a minor is void ab initio. It is not surprising that the concerned workman was taking contract in the name of his minor son Shri A. Kumar. The most surprising thing as to how a minor was allowed by the authority of the management to do contract work. The learned counsel for the workman submitted at this stage that there is no paper to suggest that any contract was taken by the concerned workman. I find that Ext. M-6 series are the payment voucher wherein payment was alleged to have been taken by the concerned workman in the name of A. Kumar. On the back of voucher A. Kumar has been written on revenue stamp. It was pointed out as to why the concerned workman will be signing as A. Kumar knowing fully well that he was not A. Kumar. Normally he was expected to have signed as Ram Kapil Mistry for A. Kumar. However, the payment voucher was used to be passed and signed by the Manager, Asstt. Manager and Agent. The question is that the concerned workman was a full-fledged employee of the management and normally he must be known to most of the authorities. In the situation why he was allowed to receive payment when the authorities fully knew that he was not A. Kumar. In none of the payment vouchers the name of Ram Kapil Mistry appears. There is no documentary evidence to prove that Shri A. Kumar was a minor. MW-1 has stated that to his knowledge there was no circular in BCCI that the son of an employee cannot do contract work. By putting such question perhaps the learned counsel for the workman wanted to derive at that A. Kumar was a contractor and he used to discharge such work and receive payment and that the concerned workman was nowhere in the picture. It was urged that according to this witness Mines Surveyor was the immediate officer of the concerned workman but he was not examined by the management to speak anything against the concerned workman about his conduct. I think the contention cannot be simply brushed aside. MW-2 has come to say that the vouchers were used to be signed by the concerned workman as A. Kumar. On some of the vouchers signature of this witness also appears. The question is as to why he was not objecting to such illegal transaction and by putting his own signature he was rather encouraging the affairs to proceed on. He has proved two work orders Ext. W-7 and W-7/1, in the name of A. Kumar. From the endorsement on the back of order it appears that some cement bags were supplied to the contractor. MW-2 has stated that for the first time Kapil Mistry came to him and asked for cement and also told that he was getting cement in the name of his son. He further stated that he used to issue cement under the direction of the Manager of the colliery. The management had issued order in the name of A. Kumar. He stated in a very clear terms that on the back of the order the signature of A. Kumar was present and believing his signature to be genuine he issued the cement to the concerned workman. In this way he believed the signature of A. Kumar on the back of work order to be genuine

It may be significantly noted here that the signature of A. Kumar appearing on the back of work order is similar to those appearing on the payment vouchers. In the situation perhaps the witness cannot be permitted to state in the next breath that the concerned workman used to sign A. Kumar on the payment voucher.

8. The learned counsel for the management has relied upon the reply to the chargesheet submitted by the concerned workman where he admitted to have been running a contract in the name of his son and signing as A. Kumar while receiving the payment. It was also urged that the concerned workman cannot be exonerated from the charges simply because of the fact that some other officials were in connivance. The reply to the chargesheet has been marked Ext. M-2. It was urged that a workman under the Mines cannot be allowed to stay in the mines after his duty hours. He also cannot be allowed to work for more than 8 hours in a day as provided under Section 31 Sub-clause (1) of the Mines Act, 1952. Just to obviate this thing the concerned workman took contract in the name of his son. For a contract in his own name he would have required to stay in the mine for more than 8 hours which was not permissible under the Mines Act. I would have appreciated the contention of the learned counsel had there been any other supporting evidence besides this document Ext. M-2. Mere admission of guilt unsupported by any other corroborating evidence cannot fasten any accused with the charge. In this case we have found that the witness for the management stated that the concerned workman had taken contract in the name of his son and he used to receive payment putting the name of A. Kumar. But MW-2 has already stated that he used to supply cement believing the signature of A. Kumar to be genuine. In such view of the matter how it can be said that the concerned workman used to sign as A. Kumar. This is not supporting rather contradictory to the admission made by the concerned workman in reply to the chargesheet. The workman has been examined as WW-1 wherein he has denied every allegation levelled against him.

9. In the result, I hold that the demand of Rashtriya Colliery Mazdoor Sangh that the management of Bhurungiya Project of Messrs. Bharat Coking Coal Limited should reinstate in service their workman, Shri Ram Kapil Mistry Mason who was dismissed from service in August, 1982 is justified. Consequently the concerned workman is entitled to be reinstated in his original job of Mason w.e.f. August, 1982 with fifty per cent back wages and other consequential benefits. The management is thus directed to reinstate the concerned workman in his original job with effect from August, 1982 with payment of fifty per cent back wages and other consequential benefits within one month from the date of publication of the Award.

B. RAM, Presiding Officer

नई दिल्ली, 31 जुलाई, 1992

का.प्र. 2218.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मिसर्स भारत कोकिंग कोल लि. की डी टी.सी. वर्मो माइन्स के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, घनबन्ध से निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, (सं 1) घनबाद के पंचवट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-7-92 को प्राप्त हुआ था।

[संख्या एल-20012(236)/89-प्रार्.प्रार. (कोल -1)]

वी.के. वेणुगोपालन, डेस्क अधिकारी

New Delhi, the 31st July, 1992

S.O. 2218.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 1) Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of D. V. C. Bermo Mines and

their workmen, which was received by the Central Government on the 27-7-92.

[No. L-20012(236)/89/IR(COAL-I)]
V. K. VENUGOPALAN, Desk Officer

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947

Reference No. 49 of 1990

PARTIES :

Employers in relation to the management of D. V. C. Bermo Mines, P. O Bermo, Dist. Giridih.

AND

Their Workmen.

PRESENT :

Shri S. K. Mitra, Presiding Officer.

APPEARANCES :

For the Employers : Shri S. K. Choudhary, Coal Supdt. Agent of D. V. C. Bermo Mine.

For the Workmen : Shri P. G. Guha, Asstt. General Secretary, DVC Staff Association.

STATE : Bihar.

INDUSTRY : Coal.

Dated the 15th July, 1992

AWARD

By Order No. L-20012/236/89-I.R. (Coal-I), dated, the 26th February, 1990, the Central Government in the Ministry of Labour, has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of section 10 of the Industrial Disputes Act, 1947, referred the following details apart, is follows :

"Whether the action of the management of D. V. C. Bermo Mines, P. O. Bermo, Dist. Giridih by not recording the exact date of birth of Sr Laloo Singh, Chowkidar/Arm Guard, as per school leaving certificate and retiring him before the date of superannuation justified ? If not, to what relief the workman concerned is entitled ?"

2. The case of the management of D. V. C. Bermo Mines, Giridih, as disclosed in the written statement-cum-rejoinder, details apart, is as follows :—

The present reference is not maintainable as the name of the workman to whom the reference relates has not been disclosed in the terms of reference. The reference suffers from total non-application of mind. The D. V. C. is statutory Corporation created under an Act of Parliament. Its functions are laid down in the said Act. The Corporation has a coal mine at Bermo called D. V. C. Bermo Colliery which is a captive mine which produces a small percentage of coal required by the Thermal Power Station of D. V. C. at Bokaro. Lallu Singh, the concerned workman was initially appointed under the management with effect from 28-10-61. Sometime after his employment stood discontinued and he was again re-employed with effect from 1-1-63. Since D. V. C. Bermo Mine is a mine under the Mines Act, the personal particulars including age/date of birth of the workman are entered in Form 'B' Register maintained under the Mines Rules. In the Form 'B' Register the age of Lallu Singh as on the date of his first appointment on 28-10-61 was recorded as 32 years on his own declaration alongwith other particulars regarding parentage, address etc. Lallu Singh, the concerned workman, was explained these entries

and he attested the same by affixing his signature in token of his having accepted correctness thereof. This constituted an admission on his part within the meaning of Sec. 17 of the Evidence Act. He was legally estopped from taking any other stand. On the basis of the aforesaid declaration made him, his date of birth was worked out to 28-10-29. The age of superannuation for the workman of the management of D. V. C. is 60 years. Lallu Singh attained the age of 60 years on 27-10-89 and he was accordingly superannuated with effect from 31-10-89 i.e. the last date of the month in which he attained the age of 60 years. Lallu Singh did not raise any controversy regarding his date of birth/age as recorded in the Form 'B' Register during his service till receipt of superannuation notice and he raised the purported dispute by mis-representation and with mala fide intentions. Judicial pronouncements have deprecated the tendency on the part of the employees to seek change of entry relating to their date of birth in the service record towards the tail end of their career. Lallu Singh with the support of the sponsoring union is trying to exploit the public sector management and to continue in its employment even after attaining the age of 60 years by illegal method. In view of the foregoing facts and circumstances, the management has prayed that the present reference be struck down as being illegal and void and its action in superannuating Lallu Singh with effect from 31-10-89 be held to be justified.

3. The case of the sponsoring union, D. V. C. Staff Association, Bermo Mines, as appearing in the written statement, briefly stated, is as follows :

D.V.C. was created by an Act of Parliament in 1948. The function and objective of the D.V.C. is primarily flood control and power generation. Bokaro Thermal Power Station is one of the power stations of D.V.C. Bermo Colliery is a captive mine for supply of coal of partial requirement to Bokaro Thermal Power Station. Service conditions of the employees of D.V.C. Bermo colliery are governed by Certified Employment Standing Orders under Employment Standing Order Act, 1946. Lallu Singh was appointed as Chowkidar in the Watch & Ward Section with effect from 22.9.64. His appointment was subject to production of medical fitness certificate from Medical Officer, Bermo Mines. In 1988 Lallu Singh was asked to sign a new Form 'B' register. At that time he came to know about the entry of his erroneous date of birth in Form 'B' Register as well as C.M.P.F. form. By application dated 25.7.88 and 1.8.88 Lallu Singh, the concerned workman, requested the Coal Superintendent & Agent to record his correct and actual date of birth as 11.8.34 on the basis of the certificate issued by the Head Master, R. R. High School, Suryapura, Dist. Rohtas, in which he read upto Class X. The Coal Superintendent did not give any reply to the representation. Thereafter the union raised an industrial dispute over the wrongful entry of date of birth of Lallu Singh with the A.L.C.(C) by letter dated 13.9.1988. The A.L.C. (C) held conciliation over the dispute on several dates. The A.L.C. (C) wrote to the Head Master, R. R. High School, Suryapura, Rehtas by his letter dated 5.12.88 asking for photostat copy of the Admission Register in which the date of birth of Lallu Singh was recorded. The conciliation proceeding ended in failure due to adamant attitude of the management. There are two circulars of D.V.C. issued in the year 1965 and 1975 laying the guidelines for verification and acceptance of date of birth. It has been clearly stated that in case of illiterate staff who is not matriculate or equivalent, his date of birth shall be invariably supported by documentary evidence and then to be entered in the record of service. If he is able to produce evidence of age/date of birth from the school where he studied, only such evidence should be accepted. Lallu Singh was wrongfully retired from service on 31.10.89 on the basis of erroneous date of birth recorded by the management. On the basis of the school certificate Lallu Singh will attain 60 years of age in the month of August, 1994. The age of attaining superannuation of a Watchman in D.V.C. Bermo Colliery is on attaining 60 years age. The date of retirement should be the last date of the month except if the date of birth falls on the first date of the month. In the circumstances, the union has prayed that the present reference be answered in favour of the concerned workman by directing the management to reinstate him in service and to allow him to continue in service upto 31.8.94. The union has also

prayed that the concerned workman is also entitled to get pay and allowances with consequential benefit and cost for the period from 1.11.89 and the date of his reinstatement in service.

4. In rejoinder to the written statement of the union, the management has stated that Lallu Singh never submitted any school leaving certificate to the management prior to his superannuation notice and reference to such certificate in the terms of reference is also illegal and baseless. The management has stated that only a small percentage of coal required by Bokaro Thermal Power Station is supplied by Bermo colliery. It is not a fact that Lallu Singh was appointed for the first time in Bermo Mine on 22.9.64 as alleged by the union. The concerned workman was given advance notice of superannuation and that time he came forward with a fabricated certificate which was not accepted by the management. At any rate even if the certificate is genuine the management was not obliged to accept the same considering its rules. The concerned workman has failed to give any reason why such certificate was not produced at the time of appointment. It has been denied that the management has recorded his date of birth wrongly. The rule of the management is to retire workman from service on the last date of the month in which they attain the age of 60 years.

5. In rejoinder to the written statement of the management, the union has stated that omission of the name of the concerned workman in the annexure is a trifling technical error. The allegation of non-application of the mind of the appropriate Government is not relevant to the merit of the present case. It has been admitted that the D.V.C. was statutorily created under the Act of Parliament. The Corporation has a coal mine at Bermo called D.V.C. Bermo colliery which is a captive mine and which produces and supplies small percentage of coal required by the Thermal Power Station of D.V.C. at Bokaro known as B.T.P.S. The union has not accepted the fact that Lallu Singh was appointed on 28.10.61. The union has denied that Lallu Singh was explained the particulars as recorded in Form 'B' register and that he accepted the same by affixing his signature in token of correctness of the same. The management in its correspondence to the Asstt. Labour Commissioner (C), Govt. of India, Hazaribagh by letter dated 6.10.88 stated that the age of Lallu Singh was 32 years as on 1.1.63. As such working out of date of birth as 28.10.29 was in contradiction to his own statement itself. The union has denied that the concerned workman attained the age of superannuation on 27.10.89 and asserted that his retirement with effect from 31.1.89 is wrongful. Lallu Singh was not intimated earlier about his erroneous recorded date of birth/age. He could only come to know of the erroneous recorded date of birth/age after publication of the superannuation notification. As soon as he came to know of this erroneous recorded date of birth, he immediately represented to the management. Lallu Singh has been wrongly retired with effect from 31.10.89 and he will be reaching the age of superannuation in August, 1994.

6. The management, in order to justify its action has examined two witnesses, namely, MW-1 S. K. Choudhary at present holding the post of Coal Superintendent and Agent of D. V. C. and MW-2 G. N. Rai, Personnel Manager in D. V. C. Mine and laid in evidence a mass of documents which have been marked Exts. M-1 to M-7.

On the other hand, the sponsoring union has examined the concerned workman and two other witnesses, namely, MW-2 Dinesh Choubey, Unit Secretary, D. V. C. Staff Association and MW-3 Shilpi Prasad Gupta, a Teacher of Suryapura High School and laid in evidence a number of documents which have been marked Exts. W-1 to W-15.

7. It is irrefragable position that D.V.C. is a statutory Corporation created under the Act of Parliament. The Corporation has a coal mine at Bermo called DVC Bermo colliery which is a captive mine which produces and supplies a small percentage of coal required by the Thermal Power Station of DVC at Bokaro known as B. T. P. S.

8. The present dispute has been raised by the Secretary, D. V. C. Staff Association consequent upon retirement of

the concerned workman, Lallu Singh on 31-10-89 by the management of D. V. C. Bermo Colliery on the ground that he reached the age of superannuation upon completion of 60 years of age on that date. According to the management, Lallu Singh did not raise any controversy regarding his date of birth/age as recorded in Form 'B' Register during his service till receipt of superannuation notice and later he raised purported dispute by mis-representation and with mala fide intention. In reply to this statement of fact the union has stated that Lallu Singh was not intimidated earlier about his erroneous recorded date of birth/age. He could only come to know his date of birth/age after publication of superannuation notification. As soon as he came to know his erroneous recorded date of birth/age immediately he represented to the management. Thus, the fact emerges from the pleading of the parties is that Lallu Singh submitted representation for correction of his date of birth after receipt of notice of superannuation. This notice of superannuation dated 20-7-88 has been marked Ext. M-3. In terms of this notice Lallu Singh was to retire from service on 31-10-89. MW-1 S. K. Choudhary, at present holding the post of Coal Superintendent/Agent of D. V. C. Bermo Mine has stated that the concerned workman did not raise any objection against the age as recorded in Form 'B' Register before the retirement forecast. It was only when the retirement forecast was issued that he submitted a representation. Lallu Singh of course tried to wriggle out of the position by stating that in 1988 the management directed him to sign Form 'B' Register and after inspection of the Form 'B' Register it came to his notice that his age was not correctly recorded therein and then he produced school leaving certificate to the management in proof of his age. It appears that he submitted his representation which was received in the office of the management on 25-7-88. Even though the concerned workman has stated that he came to know that his age was not correctly recorded in Form 'B' Register when he was directed to sign Form 'B' Register by the management, the pleading of the parties and evidence on record firmly establish the position that he made representation to the management for correction of his age after he had received superannuation notice from the management.

It appears that when he submitted his representation, he had, according to the management, one year and odd months to retire from service.

8. Shri S. K. Choudhary, representative of the management has submitted before me that such representation and industrial dispute raised by the workman for correction of age at the fag end of his character have been deprecated by different Courts. In support of his contention he cited a decision reported in 1987 Lab. I. C. 579 (M.P.) (Steel Authority of India Ltd. Vs. Industrial Court, Indore and others). Indeed, it has been held in the decision cited that if employees are left to challenge the date of birth at any point of time at their whim, it would amount to interference in the terms of contract of service and hence the circular issued by the company was reasonable and application of the employee was liable to be rejected. In that case there was a compulsive clause to raise dispute over the age at a certain point of time. But in the present case no such circular envisaging the provision for raising dispute at a certain point of time has been issued. Besides, in the present dispute the scope of enquiry is very limited whether the management is justified in not recording the exact date of birth of the concerned workman as per school leaving certificate and retiring him from service before the date of superannuation as per school leaving certificate. Hence, in my view, the present reference is maintainable.

9. The management has complained that the name of the concerned workman does not appear in the schedule nor has the appropriate Government applied its mind in making the present reference. Both these contentions of the management have no substance since later by Corrigendum the appropriate Government has provided the name of the concerned workman. The appropriate Government has also applied its mind in making the reference because the only question to be considered in this case is whether the management is justified in not recording the date of birth of the concerned workman as per school leaving Certificate.

10. According to the management, Lallu Singh was initially appointed by the management with effect from

28-10-61 and sometime thereafter his employment stood discontinued and again he was re-employed with effect from 1-1-63. In support of this fact the management has produced the relevant Form 'B' Register which has been marked Ext. M-4. At Sl. No. 192 of the Form 'B' Register the name of the concerned workman appears. Shri S. K. Choudhary has deposed that earlier it was the practice of the management to maintain a composite register containing Form 'B' Register and Attendance Register. Ext. M-4 appears to be a composite register containing Form 'B' Register and Attendance Register. Adverting to this register it appears that the age of the concerned workman was recorded as 32 years on the date of his initial appointment. The register further discloses that he was initially appointed on 25-10-61 and his employment was discontinued on 1-9-62. Thereafter his service was again discontinued with effect from 31-12-62 but his date of appointment after 1-9-62 has not been mentioned. Anyway, the register further discloses that he was again appointed on 1-1-63 and his service was discontinued on 26-1-63 for long absenteeism.

Shri Guha has questioned the authenticity of this document and pointed out that the date of his re-appointment after 1-9-62 has not been disclosed in the register. The position is really so. The union has stated that the concerned workman joined the service of the Corporation on 22-9-64. The letter of appointment dated 25-9-64 supports this position. But that the concerned workman also worked in the Corporation before 25-9-64 is established by documentary evidence. It appears that he submitted two applications praying for earned leave from 8-3-63 to 16-3-63 and 7-6-63 to 14-6-63. It appears that his prayer for leave was approved (Exts. M-6 and M-6/1). These two documents again point out that sometime after 26-1-63 the concerned workman was again re-appointed by the management.

11. According to the management, Lallu Singh disclosed his age on the date of his first appointment as 32 years alongwith other particulars, such as, parentage, address and he signed the Form 'B' Register in token of his having accepted the correctness thereof. The sponsoring union has disputed this fact.

12. Shri Guha has submitted that the concerned workman never accepted the correctness of his age as recorded in Form 'B' register as he had no knowledge about it. But then the question remains that Form 'B' Register contains other particulars of the concerned workman which are not alleged to be incorrect. Thus, the reasonable inference that may be drawn is that all the particulars in Form 'B' Register including his age was provided by the concerned workman. He signed Form 'B' Register in English. It has been tried to establish that he does not know English. But that is immediately dismissed as contention of no consequence since the concerned workman signed the deposition sheet in English before this Tribunal.

13. Now, the question remains as to whether the management was justified in not accepting the school leaving certificate of the concerned workman to record his date of birth. Immediately after publication of the notice for retirement the concerned workman obtained school leaving certificate issued by Head Master of Surajpura High School (Ext. W-14). In the school leaving certificate it has been disclosed that the date of birth of the concerned workman was 11-8-34. There is no evidence on record on what basis the date of birth was recorded in the Admission Register of the school. Besides, in the Admission Register (Ext. W-13) the name of the concerned workman has been mentioned as Laloo Chaudhary, son of Rambriksha Choudhary. The Head Master had written to the A. L. C. (C) that in the school leaving certificate the surname of the concerned workman was changed to 'Singh' in place of 'Chaudhary' at his own request. But Laloo Singh and Laloo Choudhary is the same person as per his record. It is incomprehensible to understand as to what the Head Master has meant by Laloo Singh and Laloo Chaudhary is the same person as per record. He seems to be an obliging Head Master by all means. WW-3 Shibji Prasad Gupta, a Teacher of Surajpura High School, has proved Admission Register of the school. He has admitted that the Admission Register of the school does not disclose the name of the school and the

original Admission Register. also bears out the same position. He has further admitted that he could not say as to who has penned the Admission Register.

Regard being had to the discrepancy of the surname of the concerned workman in the Admission Register and in the School Leaving Certificate and also of the fact that the Admission Register does not bear the name of the School, I think that the certificate produced by the concerned workman cannot be accepted as genuine piece of evidence in respect of his age. Besides, no explanation has been provided by the concerned workman as to why he did not produce school leaving certificate at the time of his initial appointment or at the time of his appointment on 22-9-64.

14. A controversy has been raised over the issue as to whether the Corporation is bound by the guideline of J.B.C.C.I. MW-1 S. K. Choudhary has stated that the Corporation has not accepted J.B.C.C.I. circular on the subject of determination of age of the workman. As a matter of fact, D.V.C. is not a member of J.B.C.C.I.

On the other hand, WW-2 Dinesh Choubey, Unit Secy. of D.V.C. Staff Association has asserted that J.B.C.C.I. instructions are applicable and followed in D.V.C. Bermo Mines. It appears that D.V.C. Bermo Mine is not signatory to N.C.W.A.I. II, III & IV. The union has not produced any positive evidence to show that J.B.C.C.I. circulars are followed in D.V.C. Bermo Mines.

The union has produced circular of D.V.C. dated 29-9-65 (Ext. W-9). Clause (ii) of the circular of the Corporation runs as follows :

"(ii) Where an employee is not a Matriculate and he is able to produce evidence of age/date of birth from the school where he studied, only such evidence should be accepted."

This circular was re-placed by circular dated 9-7-75 (Ext. W-8). Clause (iii) of the circular reads as follows :

"(iii) In the case of literate staff who is not a Matriculate or equivalent the date of birth shall be invariably supported by documentary evidence and entered in the record of service in the employees own handwriting. If he is able to produce evidence of age/date of birth from the school where he studied, only such evidence should be accepted. If not, he should produce documentary evidence of authentic nature in support of his declaration of age."

The concerned workman did not produce any documentary evidence in support of his age before the management. Hence, the management was constrained to record his age as per his own declaration in Form 'B' Register as pointed out before. The JBCCI circular has been produced by the union and marked Ext. W-15. The relevant provision for review and for determination of date of birth in respect of existing employees is envisaged in the circular is reproduced herein below :

"(a) Wherever there is no variation in record such cases will not be reopened unless there is a very glaring and apparent wrong entry brought to the notice of the management. The management after being satisfied on the merits of case will take appropriate action for correction through age determination committee/Medical Board.

(b) Wherever there is variation a suitable provision for age determination committee/Medical Board would be made."

In terms of this circular re-opening of the case of the concerned workman in respect of his age is not warranted as there is no evidence regarding variation of age of the concerned workman in the records of the management.

Shri Guha has submitted that the management has accepted the date of birth in certain cases even though the date of birth on initial appointment in these cases were otherwise. He has brought on record a settlement in this regard marked Ext. W-10. But here, it appears that the management ac-

cepted the date of birth of T. Kanjilal on the basis of age as recorded in Form 'B' Register. There is no evidence on record that the management has deviated from its normal practice in this case. It appears that the management issued two Office Orders dated 18-1-74 (Ext. M-1) and dated 2-3-74 (Ext. M-2) inviting representation in regard to the entry of age in the register of the office till 22-2-74 (Ext. M-1). By second office order dated 2-3-74 (Ext. M-2) the date was extended to 31-3-74. A copy of these office orders were sent to the Secretary, D.V.C. Staff Association, D.V.C. Mines with a copy of the list of employees with their age as recorded in the register. A copy of these Office Order were displayed in the Notice Board. Even then neither the union nor the concerned workman moved an inch for correction of the age of the concerned workman.

15. Considering these evidence on record and facts and circumstances of the case, I come to the inescapable conclusion that the management of D.V.C. Bermo Mines is justified in not recording the date of birth of the concerned workman as per School Leaving Certificate and retiring him from service on the basis of age as recorded in its record.

16. Accordingly, the following award is rendered the action of the management of D.V.C. Bermo Mines in not recording the date of birth of the concerned workman as per School Leaving Certificate is justified. The management is also justified in retiring him from service on the basis of age as recorded in its record.

In the circumstances of the case, I award no cost.

This is my award.

S. K. MITRA, Presiding Officer.

नई दिल्ली, 31 जुलाई, 1992

का.आ. 2219—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सैमर्स टाटा स्टील लि. की मलकरा कोलियरी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधीकरण (सं. 2) धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-7-92 को प्राप्त हुआ था।

[संख्या एल-20012(358)/90-आर्.आर. (कोल-1)]

वी.के. वेणुगोपालन, डेस्क अधिकारी

New Delhi, the 31st July, 1992

S.O. 2219.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2) Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of M/s. Tata Iron and Steel Co. Ltd. Malaker Colliery and their workmen, which was received by the Central Government on 29-7-92.

[No. L-20012(358)/90 IR (Coal-1)]

V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT:

Shri B. Ram, Presiding Officer.

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act, 1947

Reference No. 99 of 1991

PARTIES:

Employers in relation to the management of Tata Iron & Steel Co. Ltd; Malkera Colliery and their workmen.

APPEARANCES:

On behalf of the workmen.—Shri D. Mukherjee, Secretary, Bihar Colliery Kamgar Union.

On behalf of the employers—Shri B. Joshi, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dhanbad, the 21st July, 1992

AWARD

The Govt. of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/358/90-I.R.- (Coal-I) dated, the 11th February, 1991.

SCHEDULE

"Whether the action of the management of Malkera Colliery of M/s. Tata Iron and Steel Company Ltd., in dismissing Shri Mohd. Muslim T. No. 67066 from service w.e.f. 1-4-89 vide their letter No. ASMG/1868/46 dated 20/28-3-89 is justified? If not, to what relief the workman is entitled?"

2. The main allegation against the concerned workman namely Md. Muslim was that he got his attendance marked on 21-4-88 while in A Shift duty although he did not go down the mine for work. Similarly he also got the attendance marked out after the expiry of the shift and that he received payment for the day without doing any work. The concerned workman has denied to have marked either "In" or "Out" in Register—C on 21-4-88, and the management falsely issued chargesheet to deprive the concerned workman of his job.

3. The management on the other hand has to say that the concerned workman committed serious misconduct of fraud and dishonesty on 21-4-88. He was scheduled to be on duty in 'A' shift. He got his attendance marked in Form—C register maintained under the Mines Act and did not go down the mine on that day. He got his attendance marked "Out" after the expiry of the shift. As his attendance was marked on 21-4-88 he got his wages for that day on the basis of the pay slip issued to him. This dishonesty was detected by the management only in the month of July, 1988 and accordingly the concerned workman was issued charge-sheet dt. 5-7-88 under Clause 19(2) of the Certified Standing Orders. The concerned workman submitted his reply dated 11-7-88 denying the allegation levelled against him. Ultimately the matter was enquired into under the domestic enquiry and the concerned workman was held guilty and dismissed.

4. It may be mentioned here that the fairness and propriety of the domestic enquiry has been admitted by the concerned workman. Thereafter the case was heard on merit.

5. Admittedly, the concerned workman did not work on 21-4-88. He received wages for 21-4-88 and the same has not been denied. The defence taken by the concerned workman was that he was not aware of the circumstances under which his attendance was marked in Form C register. As regards the receipt of the wages he has to say that he being an illiterate employee could not ascertain as to whether he was paid for 21-4-88 or not.

6. While giving parawise reply to the W.S. of the concerned workman the management stated that the attendance clerk will not book the attendance of the workman unless he will report for his duty at the beginning of his shift. He will not put time of entry at the "In" column without seeing the person at the counter. Similarly the attendance clerk will not put down out" col. without seeing the person

at the counter. In this way according to the management the concerned workman had appeared at the counter both at the beginning and end of the shift and that the attendance clerk had seen him personally. Without going into the merit of the case it may be noted that human being cannot act and behave like a computer machine. It may be specifically noted that the truth always suffers from some infirmity if projected through human process. Therefore, it cannot be said with all certainty that the Attendance Clerk was hundred percent correct in marking the attendance of the employees. Some lapses though in ignorance cannot be completely ruled out. Here I may refer to the evidence of the attendance clerk Shri B. S. Bhattacharjee who was examined before the Enquiry Officer. During cross-examination the question was put to witness as to whether he remembered any other person present in the attendance cabin at the time of booking attendance on the alleged day to which he replied in negative. He was also asked as to how he was in a position to remember that on that day the concerned workman had come and got attendance marked "In". The witness replied that he remembers only because he did not mark the attendance without seeing the person. I find the witness has stated just in a mechanical manner and one cannot be in a position whosoever he may be to remember who came for attendance and who did not.

7. Now let us see how far the management has been able to prove the charges of fraud and dishonesty of the concerned workman. The concerned workman in his reply to the chargesheet had stated that he while coming for duty on 21-4-88 had some quarrel with one Ramlal Barhi in connection with some business matter and thus he was prevented from going to duty. Again on the same day at about 2 P.M. he had quarrel with the same man giving rise to a criminal case which was lodged at Jorapur P. S. In the circumstances he failed to understand as to how his attendance was marked, in the attendance cabin.

8. In the domestic enquiry one Shri Bijoy Pandey, Senior Personnel Officer of Malkera colliery had been appointed as the Representing Officer of the management. He proved a Cap Lamp Register to show that cap lamp was not issued to the concerned workman. Admittedly, the concerned workman did not go down the mine and so naturally no cap lamp was issued to him. The witness stated that Md. Muslim had been deputed to work in 15 Button seam during the month of April, 1988. One Shri J. N. Trigunait, Asstt. Manager was the Incharge of 15 Button seam and after enquiry from him it was revealed that the concerned workman did not report to him on 21-4-88 for allotment of duty and his whereabouts could not be known till the end of the shift. The Presenting Officer also enquired from one Shri Mukul Sanyal, Overman who was on duty in B Shift on 21-4-88 Shri Sanyal also stated that he did not see the concerned workman on duty on 2-4-88.

9. Shri J. N. Trigunait was examined before the Enquiry Officer as MW-2. He stated that the concerned workman did not go underground for duty on 21-4-88. He also stated to have enquired and inspected the section along with Shri Sanyal on 21-4-88 itself. But they did not see Md. Muslim either on underground or on the surface. However, Shri Sanyal MW-3 has denied to have inspected the section along with Shri Trigunait on 21-4-88. This means either of the two witnesses are stating falsely. In cross-examination these two witnesses have not denied the possibility of marking attendance by mistake. It was suggested to Shri Trigunait that the attendance of the concerned workman might have been marked by mistake to which the witness replied in affirmative and stated that it was possible because no Cap Lamp was issued to him. Shri Sanyal was to allot the duty of the employees working underground. He stated that he had not allotted any duty to the concerned workman on 21-4-88, and it was suggested to the witness that the concerned workman might have absented on that day to which the witness replied that it was possible because he had not allotted any job to the concerned workman. The evidence of these two witnesses will rather support the contention of the concerned workman that his attendance might have been booked due to some mistake or inadvertence on the part of the Attendance Clerk.

10. The statement of the concerned workman was recorded during the enquiry and there he stated something what he had stated in reply to the chargesheet. Further stated that on 21-4-88 while on way to duty he had a quarrel with Shri Ramlal Barhi. At about 8 A.M. he went to Md. Osman Sarpanch at Digwadih and requested him to intervene into the matter. He was with the Sarpanch from 8. A.M. to 10 A.M. Lastly the dispute was settled in presence of Sarpanch and other respectful persons of the locality. The concerned workman had filed the certificate of the Sarpanch and the settlement paper which are on the record. In cross-examination he stated that he was not given any warning letter for unauthorised absence. One Shri A. K. Hazra was summoned by the Enquiry Officer and was examined to explain the procedure as to how a workman is allowed to join his duty in case of unauthorised absence for more or less than 10 days. He stated that the workman is given warning and joining slip. The concerned workman in his statement stated that he was also given joining slip which he submitted in the Attendance Cabin. He stated that on other occasion he absented but he was never served with any warning letter. In the face of this evidence I doubt if the procedure is strictly followed by the management or not.

11. Shri Ramlal Mistry was called as witness and he stated that he had gone to his native village and returned at 8.00 A.M. on 21-4-88. Naturally by making such statement he wanted to say that he had no occasion to quarrel with the concerned workman at 6.30 A.M. on 21-4-88. He is a carpenter and according to him he was on duty from 9 A.M. to 5 M.P. on that day but admittedly at about 2 PM he had come home to take one of his implements namely Basuli when he was assaulted by the concerned workman. In my view this witness cannot be called a truthful witness while speaking the case of the concerned workman only because he had a fight with him. No doubt the matter was settled at the intervention of the respectable person of the locality but the ting of the hostility is expected to be there. The enquiry officer held the certificate of Sarpanch was an after thought because in reply to the chargesheet the concerned workman had not stated that he had met the Sarpanch. I think every details are not necessarily to be stated in reply to the chargesheet.

12. I have taken into consideration all these matters plus the oral and documentary evidence both. No doubt I find some infirmity in the evidence of the concerned workman but as is not supposed to prove his innocence. It is for the management and the management alone to prove the guilt of the concerned workman, as levelled against him in the chargesheet. Two witnesses of the management have not denied the possibility of marking attendance by mistake. I find that the management has not been able to prove the charges satisfactorily against the concerned workman. The management has brought some documents on record to prove the past misconduct of the concerned workman. Of course that would have been considered at had the concerned workman been proved guilty of the charges. These documents have been marked Ext. M-11 to M-13. They are the records of the misconduct committed on 2-9-83 by the concerned workman. For the reasons stated above I am to hold that the concerned workman was not guilty of any charge as levelled by the management and so the order of dismissal passed by the management is hereby set aside. The concerned workman is entitled for reinstatement with full back wages and other consequential benefits. The management is thus directed to reinstate the concerned workman with payment of full back wages and other consequential benefits from the date of dismissal to the date of reinstatement within one month from the date of publication of the Award.

B. RAM, Presiding Officer.

नई दिल्ली, 31 जुलाई, 1992

का.प्र. 3370.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, नैसर्ग भारत 2020 GI/92—8

कोकिंग कोल लि. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 2), धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-92 को प्राप्त हुआ था।

[संख्या एल-20012 (210)/90-आई आर (कोल-1)]

वी.के. वेणुगोपालन, डेस्क अधिकारी

New Delhi, the 31st July, 1992

S.O. 2220.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (11 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2) Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of M/s. Bharat Coking Coal Ltd. and their workmen, which was received by the Central Government on 20-7-1992.

[No. L-20012/210/90-IR (Coal-I)]

V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri B. Ram, Presiding Officer.

In the matter of a reference under Section 10(1)(d) of the I. D. Act, 1947

Reference No. 48 of 1991

PARTIES :

Employers in relation to the management of M/s. B.C.C.L and their workmen.

APPEARANCES :

On behalf of the workmen.—Shri D. Mukherjee, Advocate and Shri D. K. Verma, Advocate.

On behalf of the employers—Shri B. Joshi, Advocate.

STATE : Bihar

INDUSTRY : Coal

Dhanbad, the 20th July, 1992

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/210/90-I.R. (Coal-I) dated, the 20th February, 1991.

SCHEDULE

"Whether the action of the management of M/s. Bharat Coking Coal Ltd. Koyal, Bhawan in not giving employment to Shri Raghunath Balmiki and 115 others is justified? If not, to what relief the concerned workmen are entitled?"

2. The concerned workmen as per list have claimed for their reinstatement with full back wages. As alleged they have been engaged in the job of cleaning and sweeping in 'D' Block of Bhuli Township where the miners quarters hospitals, dispensaries, school and the offices situate. It is the case of the concerned workmen that they have been working permanently and continuously in the said block. They also claim to have worked for more than 240 days in a calendar year and their retrenchment by the management of the BCCL without notice or without payment of compensation as required under the provision of the Industrial dispute Act was illegal and unjustified. The concerned

workmen claims to be under the direct control and supervision of the management of BCCL. It was stated that one Capt. O. P. Srivastava the then Senior Administrative Officer of Bhuli Township had already written to the management of BCCL that these concerned workmen had been regularly working under his control and supervision. It was further stated that in the year 1981 about 54 workmen were stopped from the duty and the Award was passed in their favour under Ref. No. 48/82. After that the management and the union entered into a settlement for implementation of the Award but the management in spite of the settlement had preferred a Writ Petition before the Hon'ble High Court which was dismissed. The concerned workmen have prayed for their reinstatement with full back wages. In the rejoinder to the W.S. of the management they denied to have ever worked under the Coal Labour Welfare Organisation. It is their persistent claim that they have been working in Block 'D' which always remained under the control and supervision of the BCCL.

3. The management has denied relationship of employer and employee between the management and the concerned workmen and that none of the workmen ever worked under the management of the BCCL. It was stated that Bhuli Township was previously under the management of Coal Mines Labour Welfare Organisation and the administration of A, B and C block of Bhuli Township was handed over to M/s BCCL with effect from 1-10-86 in pursuance of abolition of Coal Mines Labour Welfare Organisation. It is their case that the management has got sufficient number of their own permanent employees and there is no scope for employment of 116 concerned workmen on the job of sweeping and cleaning. There was no contractor under the Coal Mines Labour Welfare Organisation engaging 116 workmen for sweeping and cleaning as alleged by the union. They have failed to produce any paper that they were the workmen engaged by any contractor. They also failed to name any contractor. They did not produce any paper showing payment to them by the contractor and thus the whole of the approach of the union is based upon the imaginary assertion.

4. In view of the pleadings of the parties the point for consideration will be as to whether the concerned workmen were the employees of the management of BCCL where they served in the Bhuli Township as cleaning and sweeping mazdoor in the work of cleaning and sweeping job.

5. Admittedly, Capt O. P. Srivastava was Senior Administrative Officer of M/s. B.C.C.I. The concerned workmen have claimed to have been appointed by Shri Srivastava. WW-1 and WW-2 both have stated that the work of the concerned workmen was supervised by Shri S. N. Singh. I find that no letter of appointment nor any identity card or the payment slip has been filed on behalf of the concerned workmen to show that actually they were appointed by Capt. Srivastava. On the other hand the workmen claim that they worked right from 1978 to 1986 directly under the control and supervision of BCCL. WW-2 Shri R. K. Prasad, President of the Bihar Shramik Sangh has stated that during the period from 1978 to 1986 there was no contractor to look after the work of Sweeping and cleaning under 'D' Block. Ext. M-8 is the annexure to the schedule of the reference in which the names of all the concerned workmen has been mentioned. The attention of the witness WW-1 has been drawn towards the writing that the concerned workmen worked under different contractor. The learned counsel for the management urged that in this way the concerned workmen themselves admitted to have worked under different contractor and thus they being contract labour are not entitled for their regularisation. The witness again stated that he was not in a position to tell the name of any contractor because there was no contractor. In this connection reference may be made to Ext. W-2 which is photo copy of the letter dated 5-8-82 written to Shri U. Mishra, Law Officer, Karmik Bhawan, BCCL, Dhanbad by Capt. O. P. Srivastava. That letter was written in connection with Ref. Case No. 48/82. The names of as many as 178 workmen have been noted in the letter itself stating that these workers were engaged to work by the different contractor. I have compared the names noted under this letter with that of the list of the concerned workmen and found that the names of most of the concerned workmen are included. In this very connection it may be worthwhile to refer Ext. W-4 and W-4/1. Ext. W-4 is a certificate dated 30-7-82 granted by Capt. O. P. Srivastava, Sr. Administrative Officer of Bhuli Township

Administration of BCCL. It was certified that the following workmen were engaged by the contractors for maintenance and repairs of hand pumps, sanitary fittings at Bhuli Township administration. There are 77 names which have been annexed with the certificate. Similarly Ext. W-4/1 is also a certificate granted by Capt. O. P. Srivastava. It is also dated 30-9-82. It was certified that the following workers were engaged to work by the different contractor in sweeping, cleaning, jungle cutting and maintenance of Bhuli Township between the period from October, 1978 to September, 1982. In this certificate there are 75 names. Ext. W-2, W-4 and W-4/1 read together will show that all the concerned workmen except one Shri Banshi Lal Balmiki. Sl. No. 3 of the annexure to the W.S. of the workmen were engaged by the different contractors in Bhuli Township to perform the job of sweeping, cleaning etc.

6. One Tarun Banerjee has been examined as MW-3 who claim to be the registered contractor working in 'D' Block of Bhuli Township since 1982. For the first time in 1982 he got work order and he is still working as contractor. He stated that he engaged a number of labourers but none of the concerned workmen were ever engaged by him. He has been looking after Block 'D' and 'E' which are always manned by the contractors. In Block A, B and C there are permanent sweepers of BCCL. It may be mentioned here that the name of Shri Banerjee does not appear under Ext. W-2 which discloses the name of so many reputed contractors. The concerned workmen served under those reputed contractors as it was evident from the contractors registers. The question is that when they were contractor labourers in the year 1982 then there can be no earthly reason as to why they will be wiped out from the roll. This means that they continued to work in the same capacity till they were stopped in the year 1986. In this connection we may examine the veracity of Shri Banerjee who has stated that he did not maintain any register of the workmen serving under him as contract labour. He also stated that the attendance of the workmen are marked on loose paper. It looks very surprising that Mr. Banerjee being a registered contractor never maintained any register of the workmen and he marked their attendance on loose paper. This shows something unconventional and against every norms and procedure. All the aforesaid exhibits on behalf of the workmen are better proof to suggest that the concerned workmen had been working in Bhuli Township though as contractor labour and prima facie I have no reason to disbelieve those documents.

7. As regards the evidence of Shri Banerjee he cannot be called a very fair and truthful witness. As per evidence of MW-2 he was selected for two consecutive year to work as contractor of Bhuli 'D' Block but for the third time the management could not decide as to who should be the contractor and the term of Shri Banerjee was extended from time to time and he is still going on. He further stated that after second term there was no tender for selection of contractor and somehow or other Shri Banerjee continued as contractor. In view of the evidence of this witness how it can be said that Shri Banerjee will prove to be a fair and truthful witness. He has been getting favour again and again from the management. As discussed above it appears that the concerned workmen were contractor labour doing the work of cleaning and sweeping work in Block 'D' Bhuli Township. They never stated to have ever worked under Coal Mines Labour Welfare Organisation which was taken over by the management of BCCL sometimes in the year 1986. Here the question arises as to whether under the provision of the Act they can be treated as contractor labour. There is sufficient evidence on the record to show that the work of cleaning and sweeping, dusting and washing are done by the concerned workmen. Undoubtedly these are the type of the work which can be classified as permanent and perennial nature of work. These are the work which should be carried out daily and throughout the year. But according to the contract labour (Regulation and Abolition) Act, 1970 all the work of perennial nature are not to be carried out by a contractor labour. The learned counsel for the workmen has also placed his reliance upon the authority reported in Current Labour Reports Vol. III March, 1990 at page 363. While disposing of the Writ Petition of 1213 of 1985 the Hon'ble High Court of Judicature at Bombay was pleased to refer a notification dated 9-12-76 of the Central Government which prohibited employment of

contract labour on and from 1977 for sweeping cleaning, dusting and washing of the building owned and occupied by the establishment in respect of which the appropriate Government is the Central Government. In this way the Sweeping and cleaning work was not to be done by any contractor labour. In the given circumstances normal and natural consequence would be that the concerned workmen were the employees of the management and they were under the supervision and control of the management. The presumption would be that the contractors were introduced for the namesake and just to jeopardise the standing and genuine claim of the concerned workmen. Even supposing for the sake of argument that they were contractors in reality then whether such contractors were authorised to get the permanent nature of work done by their labourers. Definitely the answer will be in negative. In that view of the matter also they will be deemed to be the employees of the management.

8. WW-1 has stated that they have been discharging all sorts and cleaning and sweeping work of building, drainage and hospitals and roads in 'D' Block of Bhuli Township. According to him they have been discharging the same nature of job as are being discharged by the permanent employees of Block, A, B, C. The nature of the job in Block A, B and C is similar to that of Block 'D' and 'E' and this fact has no where been seriously challenged by the management. On the other hand the evidence of MW-2 will rather support this fact. He has been working as Town Administrator in Bhuli Township and since April, 1981 has been looking after the administration of Bhuli Township. He has stated that Bhuli Township consists of Five Blocks. Blocks A, B and C were taken over from Coal Mines Welfare Organisation and Block 'D' and 'E' were in BCCL from before. This means 'D' Block was in BCCL from before. It be noted that the concerned workmen claim to have been working under 'D' Block alone from the very beginning. The witness further stated that there are permanent employees so far Block A, B and C are concerned to carry out the job like cleaning, sweeping and sanitation. As regards Block 'D' and 'E' they engage contractors to discharge the same type of job. Here we may pause for a moment and think over the matter as to why such distinction in the character of the employees. There is no reason as to why permanent employees will be doing the work of sweeping and cleaning in Block A, B and C and exactly the same type of job in Block D and E will be done by contractor labour on casual basis. The question is that such type of work are to be done everyday throughout the year. MW-1 has stated that the cleaning work of Bhuli Township was done on regular basis. MW-3 Shri Tarun Banerjee also stated that cleaning work is done daily. The evidence of these two witnesses are more than sufficient to show that these are permanent and perennial nature of work and there can be no satisfactory and plausible reason as to why the permanent work will be done by contractor labour.

9. The management has stated that Bhuli Township has got its own permanent employees and such a large number of workers cannot be adjusted there. I think such plea cannot be appreciated nor it can be entertained. The moment it is proved that the concerned workmen have been doing permanent nature of job it is for the management to adjust them and give them employment. In this connection evidence concerning the dimension of the work I may again refer to the evidence of Shri Tarun Banerjee. He has stated in his cross-examination that in D and E block there are more than 2000 quarters of the workmen. The cleaning work of roads and drainage are also done by the workman concerned. There are about 1000 safety tanks in both the blocks. However, no safety tank is cleaned by the labour of Shri Banerjee. He stated that such work is done only through 35 sweepers. The statement made by Shri Banerjee cannot be appreciated because the cleaning and sweeping of 2000 quarters plus roads and drainage cannot be accomplished daily by a such small number of sweepers.

10. There are some other documents on behalf of the management. Ext. M-1 and M-2 are the letters written to Shri Tarun Banerjee for maintenance and municipal services in Bhuli Township. Ext. M-4 speaks about terms and conditions of service of the employees who were transferred from Coal Mines Welfare Organisation to Coal India Ltd. I find that a few other documents have also been brought on record by the workmen. Ext. W-5 and W-6 are

the notes to the work Supervisor Bhuli Township for getting urgent work done. Ext. W-9 to W-10/1 also are the note of the similar type regarding the cleaning and sweeping.

11. I have examined every aspect of the matter, in this case and after having gone through the evidence both oral and documentary I am constrained to hold that all the concerned workmen (as per the list annexed herewith) except one Shri Bansi Lal Balmiki son of Mala Ram Balmiki were doing permanent nature of job in Bhuli Township from the very beginning and they are entitled for their regularisation by the management of BCCL. It is held and ordered accordingly. As regards the full back wages I find that all these workmen did not go for work, they should have raised their dispute a bit earlier. In the circumstances I do not propose to give any back wages. The management is thus directed to regularise all the concerned workmen except Shri Bansi Lal son of Mala Ram Balmiki in Cat. I within one month from the date of publication of the Award.

This is my Award.

B. RAM, Presiding Officer

LIST OF WORKMEN IN REF. NO. 48/91

1. Sri Raghunath Balmiki S/o Dhanna Ram Balmiki.
2. Smt. Chhoti Devi Mehtarin W/o Late Sona Ram Balmiki.
3. Sri Banshi Lal Balmiki S/o Mala Ram Balmiki.
4. Sri Ratan Lal Mahato S/o Pyray Mahato.
5. Sri Shankar Kishore S/o Jogeshwar Ram.
6. Smt. Mohini Devi W/o Budha Lal Balmiki.
7. Sri Rameshwar Lal Balmiki S/o Sohan Lal Balmiki.
8. Sri Manna Balmiki S/o Dayal Ram Balmiki.
9. Sri Ram Swarup Balmiki S/o Dhanna Ram Balmiki.
10. Sri Niwas Ram Balmiki S/o Budha Balmiki.
11. Jagdish Balmiki S/o.
12. Shri Hanuman Chandra Balmiki S/o Munna Balmiki.
13. Shri Mohan Ram S/o Kamla Prasad.
14. Sri Kanwar Paswan S/o Mishri Paswan.
15. Sri Bhola Prasad S/o Bacha Prasad.
16. Sri Rabindra Sharma S/o.
17. Sri Radha Krishna S/o Chitawan Saw.
18. Sri Dinesh Ram S/o Shoti Ram.
19. Sri Jitwan Ram S/o Kuldeep Das.
20. Sri Brihaspat Ram S/o.
21. Sri Manoj Kumar S/o Jagdish Singh.
22. Sri Ranjit Prasad S/o Bharat Prasad.
23. Sri Surendra Ram S/o.
24. Sri Bishwa Nath Ram S/o.
25. Sri Suresh Pandit S/o Deo Dutt Pandit.
26. Sri Kali Ram S/o Ram Autar Rabidas.
27. Sri Balmiki Ram S/o Ram Autar Rabidas.
28. Sri Nageshwar Raut S/o.
29. Sri Jalo Rauth (Mehata) S/o Prabhu Mehta.
30. Sri Kanai Saw S/o Hari Charan Saw.
31. Sri Bindeswari Mondal S/o Shyamli Lal.
32. Sri Jogeshwar Raut S/o Mushan Dusad.
33. Sri Krishna Deo Ram S/o Ram Autar Ram.
34. Sri Ramdhani Ram S/o.
35. Sri Arun Kumar S/o Ram Krit Singh.
36. Sri Dhananjay Kumar S/o Ram Deo Lal.
37. Sri Daya Kant Ram S/o Ram Bhanju Kanu.
38. Sri Uma Shankar S/o Chaitra Thakur.
39. Sri Prem Chandra Balmiki S/o Ratan Ram Balmiki.

40. Smt Parwati Devi W/o Radhey Kishan Balmiki.
41. Sri Kishan Lal Balmiki S/o Mangal Ram Balmiki.
42. Sri Bhawar Lal S/o Madhuri Saw.
43. Sri Sona Ram S/o Payre Mahato.
44. Sri Hara din Balmiki S/o Rameshwar Balmiki.
45. Sri Gopal Balmiki S/o Late Navin Balmiki.
46. Smt. Santra Devi S/o Prakash Chandra Balmiki.
47. Smt. Chandra Devi W/o Chatrubhuj Balmiki.
48. Sri Tapan Kumar Deogharia S/o Basdeo Deogharia.
49. Smt. Koshila Devi W/o Mahabir Ram Balmiki.
50. Sri Karu Ram S/o Late Sri Saran Rani.
51. Sri Jagdish Paswan S/o Chitwan Dusad.
52. Sri Gopal Paswan S/o Lakeshwar Paswan.
53. Sri Deo Kumar S/o Rai Nath Singh.
54. Sri Prem Kumar S/o Shyamli Lal Harijan.
55. Sri Shyam Sunder Singh S/o Late Kameshwar Pd. Singh.
56. Sri Jagdish Ram S/o Shyamli Lal Harijan.
57. Sri Jogeshwar Prajapat S/o
58. Sri Raghu Nandan Pd. S/o.
59. Sri Surja Narayan Prasad S/o. Babua Pd. Singh
60. Sri Shiv Narayan Ram S/o. Kameshwar Dus.
61. Sri Subodh Kumar S/o. Kameshwar Pd. Singh.
62. Sri Ram Chandra Ram S/o.
63. Sri Shali Gram Pandit S/o Kedar Pandit.
64. Sri Naresh Prasad S/o.
65. Shri Ashok Ram S/o.
66. Shri Bhagirath Saw S/o. Pahalwan Saw.
67. Shri Radhey Saw S/o Chitwan Saw.
68. Shri Baleshwar Mondal S/o.
69. Shri Lotan Mondal S/o.
70. Shri Uresh Ram S/o. Buttan Saw.
71. Shri Tanik Mandal S/o.
72. Shri Jag Narayan Ram S/o
73. Shri Ashok Kumar Verma S/o. Late Gauri Shankar Prasad.
74. Shri Kapildeo Prasad Mahato S/o. Ganesh Mahato.
75. Shri Satyadeo Kanu S/o. Ram Prasad Kanu.
76. Shri Sachitanand Upadhyay S/o. Bram Deo Upadhyay.
77. Shri Sheo Lakhan Das S/o. Ram Avtar Rabidas.
78. Shri Rajash Kr. Sinha S/o. Sri Suresh Chandra Sinha
79. Shri Rajeshwar Tiwari S/o. Basist Tiwari.
80. Shri Anjani Kr. Sinha S/o. Bharat Lal.
81. Shri Mantu Prasad S/o. Maheshwar Prasad.
82. Shri Shyam Lal Prasad S/o. Ramjee Pd.
83. Shri Upendra Kr. Singh S/o Mallik Singh.
84. Shri Ashok Kr. Singh S/o. Sri Hari Singh.
85. Shri Dilip Kr. Mahato S/o. Premeshwar Mahato.
86. Shri Raj Kumar Paswan S/o. Dhuku Paswan.
87. Shri Balmiki Singh S/o. Rameshwar Singh.
88. Shri Suresh Pandey S/o. Kedar Pandey.
89. Shri Manoj Kr. S/o Kedar Pandey.
90. Shri Tuntun Prasad S/o. Sri Shaki Chand Saw.
91. Shri Chandra Deo Prasad Singh S/o. Bhunesh Pd. Singh.
92. Shri Jai Prakash Yadav S/o. Ajbi Yadav.
93. Shri Kisto Tati S/o. Kedar Tati.
94. Shri Suresh Kr. Saw S/o Ganga Pd. Saw.
95. Shri Arvind Pd. Singh S/o Srisiya Ram Pd. Singh.
96. Shri Uma Kant S/o. Sri Narayan Lal.
97. Shri Shambhu Kumar S/o. Sri Jagdish Prasad.
98. Shri Shashi Bhushan Pd. S/o. Kameshwar Prasad.
99. Shri Baleshwar Pandey S/o. Jato Pandey.
100. Shri Sunir Kumar S/o. Abohya Kant.
101. Shri Rabi Ranjan Sinha S/o. Late Laxmi Shaukar Sinha.
102. Shri Manojanjan Kr. S/o. R. P. N. Sinha.
103. Shri Priya Ranjan Kr. S/o. R. P. N. Sinha.
104. Shri Mithilesh Chandra S/o. Khairanand.
105. Shri Sanjoy Kr. S/o. Prabhakar.
106. Shri Suresh Kumar S/o. Ganga Sah.
107. Shri Bangtेशwar Tiwari S/o. Basist Tiwari.
108. Shri Mithileshwar Tiwari S/o. Basist Tiwari.
109. Mana Kr. S/o. Onkar Nath Tiwari.
110. Shri Sushil Kumar S/o. Sri Kant Tiwari.
111. Shri Mohitosh Banerjee S/o. Kali Pada Banerjee.
112. Shri Birendra Kumar Sharma S/o. Late Ram Chandra Sharma.
113. Shri Subir Kumar Mitra S/o. Sri Baidya Nath Mitra.
114. Shri Prabhakar Goswami S/o. Anil Baran Goswami.
115. Shri Rajendra Prasad S/o. Ram Prasad Nonia.
116. Shri Subash Chanda Chauhan S/o. Late Sitaram Chauhan.
117. Shri Kant Bajpai S/o. Sri Rishi Bajpai.

B. RAM, Presiding Officer

नई दिल्ली, 6 अगस्त, 1992

का.सा. 2221—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, इंडियन ओवरसीज बैंक के प्रबन्धन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में औद्योगिक अधिकरण, मद्रास के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार का 27-7-92 को प्राप्त हुआ था।

[संख्या एन-12012/120/88-डी-2 (ए)]

बी.के. वेणुगोपालन, डेस्क अधिकारी

New Delhi, the 6th August, 1992

S.O. 2221.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Madras as shown in the Annexure in the Industrial dispute between the employers in relation to the Management of Indian Overseas Bank and their workmen, which was received by the Central Government on 27-7-1992.

[No. L-12012/420/88-D-IIA]

V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMILNADU
MADRAS

Tuesday, the 31st day of March, 1992

Present :

THIRU M. GOPALASWAMY, B.Sc., B.L., Industrial Tribunal.

INDUSTRIAL DISPUTE NO. 25 OF 1989

(In the matter of the dispute for adjudication under section 10(1)(d) of the Industrial Disputes Act, 1947 between the workman and the management of Indian Overseas Bank, Madras-2).

BETWEEN

Thiru P. G. Kuttappan, 2, Ayyavu Street, Ayyavu Colony, Aminjikarai, Madras-500 029.

AND

The General Manager, Indian Overseas Bank, P. B. No. 3765, 762, Anna Salai, Madras-600 002.

REFERENCE :

Order No. L-12012/420/88-D.II(A), dated 2-3-1989 of

the Ministry of Labour, Government of India.

This dispute coming on for final hearing on Wednesday, the 4th day of March, 1992 upon perusing the reference, claim and counter statements and all other material papers on record and upon hearing the arguments of Thiruvallargal K. M. Venugopal and R. Dakshinamurthy, Advocates appearing for the workman and of Thiru N. G. R. Prasad, Advocate appearing for the Management and this dispute having stood over till this day for consideration, this Tribunal made the following.

AWARD

in

I. D. No. 25 of 1989

This dispute between the workman and the management of Indian Overseas Bank, Madras-2 arises out of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in its Order No. L-12012/420/88-D.II(A), dated 2-3-1989 of the Ministry of Labour, for adjudication of the following issue :

"Whether the action of the management of Indian Overseas Bank in dismissing from service Shri P. G. Kuttappan is justified? If not to what relief is the workman entitled?"

2. The Petitioner Thiru P. C. Kuttappan in his claim statement states as follows : After he joined the Respondent-Bank as a Punch Card Operator, he was promoted as a Clerk from October, 1986 and later he was working in Aminjikarai Branch. On 13-1-1986, he has drawn money from his savings Bank Account with the said Branch through a withdrawal slip. He did it on the belief that his friend Thiru Shanmugavel would remit the said sum of Rs. 500 into the Petitioner's S. B. account as he promised. He withdraw the said sum to give the same to another friend Mr. Hari as a loan. After Pongal holidays, when contacted, he was told by Shanmugavelu that he had remitted a sum of Rs. 500 into the account of the Petitioner.

3. But it turned out to be otherwise. The Branch Manager Thiru Srinivasan after checking the accounts questioned the Petitioner as to why he withdraw a sum of Rs. 500 from the Savings Bank Account in which the credit balance was only 22 paise on 13-1-1986. Under his instructions, Petitioner paid back the amount into the S. B. Account. Only then he realised that Thiru Shanmugavel failed to remit the money on 13-1-1986. The Disciplinary Authority issued a charge memo to the Petitioner and suspended him on 21-5-86. The charge memo alleged that the Petitioner's withdrawal of Rs. 500 and his connected acts amounted to gross misconduct in terms of para 17.5(d) and 17.5(j) of the Bipartite settlement. The Petitioner gave his explanation alleging that he acted bonafide in withdrawing a sum of Rs. 500 by believing the words of Thiru Shanmugavel who was a co-worker in the same Branch.

4. The Petitioner did not have any dishonest intention at the time of withdrawing the amount. After holding a do-

mestic enquiry, and completing other formalities, the Petitioner has been dismissed from service. His post conduct in the service has been without blemish. The punishment of dismissal is very extreme. Hence the Petitioner prays for an award for reinstating him in service with continuity of service and back wages.

5. The Respondent in its counter states as follows : The misconduct of the Petitioner consists of making fictitious credit entry for Rs. 500 and then withdrawing the same from the S. B. Account maintained at the Aminjikarai Branch of the Respondent when there was only 22 paise to his credit. The Petitioner's case that he gave the sum of Rs. 500 with drawn by him to Mr. Hari and that his co-worker Thiru Shanmugavel promised to pay into the account Rs. 500 on the same day is not proved. This plea was taken belatedly only during the enquiry. He actually remitted the amount into his account only on 21-3-1986 under the direction of the Branch Manager Thiru Srinivasan. The said Thiru Shanmugavel was not examined as a defence witness. The acts of misconduct constitute violation of paras 17.5(d) and 17.5 (j) of the Bipartite Settlement. The witnesses examined by the management at the domestic enquiry have amply proved the charges. The punishment of dismissal awarded to the Petitioner is just and adequate. The claim is liable to be dismissed.

6. The point for determination is as follows :

Whether the punishment of dismissal is extreme and disproportionate and is it liable to be modified under section 11-A of the Industrial Disputes Act?

7. No oral evidence was adduced on either side. Exs. M-1 to M-38 have been marked by consent. Arguments were advanced by both sides.

8. POINT : The major act of misconduct is that the Petitioner withdraw a sum of Rs. 500 from the Savings Bank Account maintained at the Aminjikarai Branch wherein he was working as a clerk on 13-1-1986, by overdraft. He is also said to have fraudulently struck off the entries in the relevant books in order to destroy evidence. He himself posted the withdrawal slip entries in the ledger book and received the money fraudulently with an intention to cause damage to the property of the respondent Bank. The charge sheet Ex. M-4 gives the details of the acts of misconduct and the paras under which they are punishable.

9. At the domestic enquiry, the Petitioner has been given full opportunity to defend himself. The domestic enquiry officer in the findings marked as Ex. M-20 has found that the charges have been proved. Thereafter the disciplinary authority has accepted the findings and issued a show cause notice to the Petitioner. It is Ex. M-21. After hearing the Petitioner's personal representations, the disciplinary authority issued the order of punishment under Ex. M-26 for dismissing the Petitioner from service without notice.

10. The learned counsel for the Petitioner has pleaded only for a reduction of the punishment on the contention that the punishment of dismissal is extreme and disproportionate. Petitioner's learned counsel has cited the case between the management of Madras Fertilizers Ltd., Manali, Madras-vs-Kannammal and others decided by the Madras High Court and reported as 1990-1-L.L.J. 298. In this decision, the learned Judge of the Madras High Court has held that the punishment given to an employee should be commensurate with the gravity of misconduct and should have been given after duly considering the past record of the employee. In the present case before us, the charge-sheeted employee Thiru P. G. Kuttappan has served in the Bank prior to the time of misconduct for 14 years without giving room for any complaint and with sincerity. He has a family which includes two aged parents and two children. The major act of misconduct is that he withdraw a sum of Rs. 500 from his Savings Bank Account by way of overdraft. This is a small loan token on the sly. On consideration of facts and circumstances, I hold that the main charge of misconduct is not very grave and at any rate it will not justify dismissal from service. I therefore find that the order of dismissal is liable to be modified under Section 11-A of the Industrial Disputes Act and

that the Respondent is liable to reinstate the Petitioner in service giving him continuity of service with full back wages along with other benefits. The Respondent is given liberty to impose upon the Petitioner any minor punishment such as suspension or stoppage of increments.

11. In the result, an award is passed directing the Respondent to reinstate the Petitioner in service giving him full back wages and continuity of service with all attendant benefits. No costs.

Dated, this 31st day of March, 1992.

THIRU M. GOPALASWAMY, Industrial Tribunal

WITNESSES EXAMINED

For both sides : None

DOCUMENTS MARKED

For Workman : Nil

For Management :

- Ex. M-1/27-3-86—Letter from Management Bank to the Regional Office of the Bank informing the irregularities commit by the Petitioner-workman in his S.B. Account with enclosures (xerox copy).
- Ex. M-2/11-4-86—Investigation Report from Regional Office of the Management-Bank (xerox copy).
- Ex. M-3/29-4-86—Letter from the Regional Office of the Management-Bank to the Petitioner-workman calling for his explanation (xerox copy).
- Ex. M-4/21-5-86—Chargesheet issued to the workman (xerox copy).
- Ex. M-5/7-6-86—Letter from the workman to the Disciplinary Authority of the Management-Bank (xerox copy).
- Ex. M-6/11-6-86—Letter from the Disciplinary Authority to the workman granting 15 days time to submit his explanation (xerox copy).
- Ex. M-7/23-6-86—Explanation by the workman to the charge sheet (xerox copy).
- Ex. M-8/3-7-86—Enquiry Notice issued to the workman with acknowledgement (xerox copy).
- Ex. M-9/14-7-86—Proceedings of the Enquiry Officer (copy).
- Ex. M-10/19-7-86—Enquiry Notice issued to the workman with acknowledgement (xerox copy).
- Ex. M-11/6-8-86—Proceedings of the Enquiry Officer (xerox copy).
- Ex. M-12/9-8-86—Enquiry Notice issued to the workman (xerox copy).
- Ex. M-13/29-8-86—Proceedings of the Enquiry Officer (copy).
- Ex. M-14/6-9-86—Enquiry Notice issued to the workman with acknowledgement (xerox copy).
- Ex. M-15/11-9-86—Proceedings of the Enquiry Officer (copy).
- Ex. M-16/27-9-86—Enquiry Notice issued to the workman (xerox copy).
- Ex. M-17/6-10-86—Proceedings of the Enquiry Officer (Copy).
- Ex. M-18/31-10-86—Letter from the Enquiry Officer to the workman granting time to submit his explanation (xerox copy) with acknowledgement.
- Ex. M-19/8-11-86—Defence summing up of enquiry proceedings (xerox copy).
- Ex. M-20/3-12-86—Findings of the Enquiry Officer (xerox copy).
- Ex. M-21/4-12-86—Show Cause Notice issued to the workman (xerox copy).

Ex. M-22/6-12-86—Letter from the Disciplinary Authority to the Dy. General Secretary, All India Overseas Bank Employees Union, Madras (xerox copy).

Ex. M-23/9-12-86—Letter from Management-Bank to the Disciplinary Authority confirming the delivery of Show Cause Notice to the workman (xerox copy).

Ex. M-24/12-12-86—Show Cause hearing before the Disciplinary Authority (xerox copy).

Ex. M-25/26-12-86— —do—

Ex. M-26/27-12-86—Dismissal order issued to the workman (xerox copy).

Ex. M-27/5-1-87—Letter from Management-Bank to the Disciplinary Authority informing the service of dismissal order to the workman (xerox copy).

Ex. M-28/9-2-87—Letter from the workman to the Appellate Authority (xerox copy).

Ex. M-29/16-2-87—Reply by the Appellate Authority to Ex. M-28 (xerox copy).

Ex. M-30/23-3-87—Letter from the Workman to the Appellate Authority requesting him to permit him to submit his appeal in writing (xerox copy).

7x. M-31/1-5-87—Appeal against the order of dismissal passed by Disciplinary Authority against the workman (xerox copy).

Ex. M-32/3-8-87—Letter from Appellate Authority to the workman (xerox copy).

Ex. M-33/11-11-87—Order of the Appellate Authority confirming the dismissal order (xerox copy).

Ex. M-34/25-1-88—Petition u/s 2-A of the I. D. Act filed by the workman before the Assistant Labour Commissioner (Central) Madras. (xerox copy).

Ex. M-35/25-1-88—Comments of the Management book on the representation of the workman (xerox copy).

Ex. M-36/6-7-88—Conciliation Failure Report (xerox copy).

Ex. M-37/2-3-89—Order No. 1-12012/420/88 D.II(A) Ministry of Labour, Govt. of India (xerox copy).

Ex. M-38/10-3-89—Summons issued to the parties (xerox copy).

M. GOPALASWAMY, Industrial Tribunal

नई दिल्ली, 6 अगस्त, 1992

का.धा. 2222—औद्योगिक विवाद प्रक्रियाम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, पंजाब एंड सिव बैंक के प्रबंधन के सबद नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक प्रक्रियाम, चंडीगढ़ के पंचायत को प्रक.शित करती है, जो केन्द्रीय सरकार की 27-7-92 प्राप्त हुआ था।

[संख्या एल-12012/16/84-डी-2 (ए.)]

यो.के. वेणुगोपालन, डेस्क अधिकारी

New Delhi, the 6th August, 1992

S.O. 2222.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab and Sind Bank and their

workmen, which was received by the Central Government on 27-7-1992.

(No. L-12012/16/84-D2A)

V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE SHRI ARVIND KUMAR, PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, CHANDIGARH

Case No. I. D. 4/88

Ravi Kant Vs. Punjab & Sind Bank

For the workman : Shri Mangat Sharma.

For the management : Shri J. S. Bawa.

AWARD

Central Govt. v de gazette notification No. L-12012/16/84-D.II(A) dated the 3rd February 1988 issued U/S 10(1)(d) of I.D. Act, 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Punjab & Sind Bank in terminating the services of Shri Ravi Kant, Peon with effect from 20-12-1983 is justified? If not, to what relief is the workman entitled?"

2. In the statement of claim it was alleged by the workman that he was appointed in the bank on 15-6-83 after qualifying the interview test held by the Bank on probation. During the probation period there was no complaint against the work and conduct. It was further alleged that his services were terminated abruptly on 20-12-1983 the date on which he had completed six months of service and this termination is illegal and unjustified on the ground that the order is abnoxious in character and is not a speaking order as no reason was given and termination was also done by the Chief Manager and not the D.G.M. who was his appointing authority and the termination is violative of Para 522 of Sastri Award and termination was also done without notice or pay in lieu of notice. It was further alleged that he was appointed against permanent vacancy and other persons viz. Viram Singh, Shri Pal, Parveen Kumari, Mukand Lal and Suresh Kumar who are junior to him are still working in the Bank. It was further alleged that there is violation of para 495 of the Sastri Award and prayed for the reinstatement with the benefit of continuity of services w.e.f. 20-12-1983.

3. The claim of the workman was contested by the bank in written statement. The preliminary objection was taken that the termination was legal and also in terms of contract of employment during the probation period and the management is within its right by virtue of the contract of employment to determine the period of probation and as such the dispute is not maintainable. On merits it was pleaded that there is no complaint against the workman about his work and conduct during the probation period but his work was found unsatisfactory. The respdt. bank denied that the termination is illegal. Further stand was taken that his period of probation was determined due to his unsatisfactory performance. Other contentions were denied and prayed for the dismissal of the reference.

4. The petitioner filed replication reasserting the claim statement.

5. In support of his case the petitioner filed his affidavit Ex. W1 in evidence in which the same facts were repeated and the main plea was taken that when he had completed probation on 20-12-1983 he was deemed to be confirmed in the service of the bank. It was further alleged in the affidavit that neither any notice nor pay in lieu of notice was given to him while terminating his services. It was further alleged that during the period of his service the management neither gave him any memo or charge sheet or any adverse remarks with regard to the performance or about his conduct. He also produced himself as WW1 and also relied Ex. W2

the termination letter. In cross examination he has admitted that he had put in 183 working days. He has also admitted that his probation was for a period of six months. He has also stated that the persons junior to him are still continuing.

The Respdt. management produced Harpreet Singh manager as MW1 who filed his affidavit Ex. M1 in evidence and documents Ex. M2 the appointment letter and Ex. M3 the termination letter. In affidavit he has deposed that the petitioner had not completed 240 days and his appointment was on probation for a period of six months and it is within prerogative of the bank terminating the contract of employment during the probationary period. In cross-examination he has shown the ignorance about retaining of the persons junior to the workman.

Both parties have addressed arguments and the same has been gone through and the record perused.

In support of the case the rep. of the petitioner has strongly contended that the probation period of the workman had already completed by 20-12-1983 and in such situation the petitioner was deemed to have been confirmed in the service of the Bank and also referred para 495 of Sastri Award and 21-18 of the Desai Award. The contention of the rep. of the workman is devoid of any force. The provisions of Sastri Award was modified by Desai Award was no help to the petitioner as they are instructive and not mandatory. In the appointment letter Ex. M2 it is none of the condition that at the end of probation period the petitioner obtain confirmation automatically even if no order is passed on that day. Rather it is contrary and it states that during the probation period his services can be terminated at any time without assigning any reasons. It further states that after probation period you will be confirmed in bank service subject to satisfactory report about your work. This indicate that the appointment letter does not prescribe automatic confirmation but requires a separate letter for confirmation. Further it is settled law as laid down in 1989(1) L.L.J. page 161 Popat Lal Vasudev Vyas and Gujarat Water Supply and Sewerage Board and others, wherein it has been held that where the petitioner is appointed as a probationer and probation period is specified it does not follow that at the end of the specified period he obtain confirmation automatically even if no order is passed in that behalf unless the terms of appointment clearly indicate that confirmation would automatically follow at the end of the specified period or there is service rules to that effect, the expiration of the probationer period does not necessarily lead to confirmation. In AIR 1972 S.C. page 873 Kedar Nath Behal Vs. State of Punjab and others it has been held that where a person is appointed as probationer in any post and period of probation is specified, it does not follow that at the end of the specified period he obtain confirmation automatically even if no order is passed on that behalf. Further in terms of the appointment letter Ex. M2 the terms of the employment was only for six months on probation or for a longer period if considered by the Bank and further it is in the entire discretion of the bank to confirm or terminate his services at any time without assigning any reason certainly falls in the exception clause bb of Section 2(oo) of the I.D. Act. It provides that if termination is carried out in terms of the contract by payment of notice pay same would not amount to 'retrenchment'. 1991 INDIAN FACTORY JOURNAL, page 606 K.A. Burot Vs. State of Gujarat (S.C.) can be read in this regard.

Another plea raised by the petitioner that appointing authority of the petitioner was Deputy General Manager but the services of the workman have been terminated by the Chief Manager who is subordinate to D.G.M. This argument is also devoid of any force. The petitioner was not the permanent employee of the Respdt. bank, he was only a probationer who has no right to the post. So this argument is rejected.

In view of the discussion in the earlier paras the action of the management in terminating the services of the petitioner is justified and no interference is called for. However the petitioner is entitled for one month salary in lieu of notice if already not paid. Reference is returned accordingly.

Chandigarh.

Dated : 19-5-92

ARVIND KUMAR, Presiding Officer

नई दिल्ली, 23 जुलाई, 1992

का.प्र. 2223—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) का धारा 17 के अनुसरण में, केंद्रीय सरकार कृत्स्न हस्तक्षेप द्वारा, नजफगढ़ के प्रबलतम के सबुद नियोजकों और उनके कर्मचारों के बीच अनुबंध में निश्चित औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक प्रधिकरण नई दिल्ली के पक्षों का प्रकाशित करना है जो केंद्रीय सरकार का 27-7-92 को प्राप्त हुआ था।

[न. एन-42012/81/89-आई आर (ड।यू.)]

के. वी. बी. उन्नी, डेस्क अधिकारी

New Delhi, the 28th July, 1992

S.O. 2223.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Rural Health Training Centre, Najafgarh and their workmen, which was received by the Central Government on 27-7-1992.

[No. L-42012/81/89-IR(DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

I.D. No. 138/89

In the matter of dispute between :

Kumari Shanta Devi,
Clerk, Rural Health Training Centre,
Najafgarh.

Versus

The Officer Incharge,
Rural Health Centre,
Najafgarh, New Delhi.

APPEARANCES :

Shri V. K. Gupta—for the workman.

Dr. Chakravarty—for the management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-42012/81/89-IR(P.U.) dated nil has referred the following industrial dispute to this Tribunal for adjudication :—

“Whether the action of the management of Chief Medical Officer, Rural Health Training Centre, Najafgarh, New Delhi in terminating the services of Kumari Shanta Devi, L.D.C. w.e.f. 6-2-86 is level and valid. If not, to what relief the workman is entitled to?”

2. Kumari Shanta Devi, Clerk, Rural Health Training Centre, Najafgarh, New Delhi in her statement of claim has alleged that she was appointed through Employment Exchange as L.D.C. w.e.f. 24-4-83 by the Officer Incharge of the Rural Health Training Centre, Najafgarh, New Delhi. She worked in the said Centre continuously upto 5-2-86 without any break to the utmost satisfaction of her superior on 6-2-86. Her services were abruptly terminated without justification on the plea that Shri N. Shiva Prasad, L.D.C. who was on deputation had come back vide R.H.T. Centre's letter dated 7-2-87. She has further alleged that in her letter of appointment there was no mention that she was appointed against any post which had fallen vacant because of Shri N. Shiva Prasad's going on deputation so the reason given in the order of termination was baseless and wrong. Her services were illegally terminated with mala fide intention and against principle of natural justice.

3. One Pushpa Rani, Peon in the Centre was promoted as clerk on purely temporary and ad-hoc basis on 1-11-85 for 3 months and again extended for three months i.e. upto April, 1986. The position of the seniority of the clerks in the above mentioned Centre as on 5-2-86 shows that the applicant-workman was senior to Kumari Pushpa Rani who was promoted on temporary basis. On the return of N. Shiva Prasad from deputation Miss Pushpa Rani should have been reverted back to the post of Peon but on the contrary Shanta Devi's services were terminated. Miss Pushpa Rani was later reverted to the post of Peon on 1-5-86 and the post of L.D.C. remained vacant till 25-8-88 when one Kumari Praveen Kumari was appointed as LDC against this vacancy on compassionate grounds i.e. death of her father. There was thus no ground for termination of Shanta Devi and it was a violation of the provisions of the I.D. Act and she deserves to be reinstated with full back wages.

4. In reply the management alleged that three posts of L.D.C. were sanctioned in this Centre. In February, 1983 two vacancies fell vacant on short term basis one consequent upon the proceeding of earned leave for 49 days by Shri Ramesh Kumar Bhatia, Hindi Typist and the other against Shri S. Prasad consequent upon his selection as U.D.C. on deputation basis to the office of Food Research and Standardisation Laboratory, Ghaziabad. Requisition was sent for the two vacancies to the Employment Exchange, Darya Ganj and many candidates were sponsored including the workman. She was selected and offer of appointment on ad-hoc basis was sent to her on 13-4-83. In the letter of appointment it was made clear that her appointment to the post of L.D.C. in this Centre would not confer any title to permanent post and that her services could be terminated at any time without any reason or notice. On these terms she joined as LDC. The other post of LDC was filled up by promoting Miss Pushpa Rani from the post of Lady Attendant-cum-Peon. She joined her duty on 1-11-85. In February, 1986 it was intimated by the department where N.S. Prasad, L.D.C. had gone on deputation that his services were no long required and he was being relieved w.e.f. 6-2-86 to join his Centre after completion of his deputation period. There was no post vacant at that time and there was no other alternative except to terminate the services of junior person in the grade of LDC i.e. either to terminate the services of Shanta Devi or to revert Kumari Pushpa to her original post of Peon. Pushpa Devi was not reverted but instead thereof Shanta Devi's services were terminated and Pushpa Rani continued after her upto 30-4-86 and she was reverted on 1-5-86. The Rural Health Training Centre, Najafgarh was subordinate office of the Ministry of Health and Family Welfare and was governed by the Rules and Regulations issued by the Government of India from time to time and was not covered in the Industrial Disputes Act. Such cases were to be presented under the Central Administrative Tribunal instead of Industrial Tribunal. The posts on regular basis are filled by selection by the Staff Selection Board and all the posts of LDCs in the said grade were filled up at present.

5. The Management examined Dr. S. Chakravarty, C.M.O. Najafgarh while Shanta Devi appeared herself as WWI.

6. I have heard representative for the parties and have gone through the record.

7. Representative for the management Dr. Chakravarty has urged that the appointment letter given to the workman clearly stipulated that her appointment was purely temporary and could be terminated at any time without assigning any reason or notice. It was on these terms that she joined the service and her appointment was governed by the Central Government Rules and not governed under the Industrial Disputes Act. At best she could have gone to the Central Administrative Tribunal for any relief and this Tribunal could not look into the illegality or otherwise of this termination and no right had vested in her to seek protection of the I.D. Act.

8. Representative for the workman on the other hand has urged that she has admittedly worked for 3 years without any break and her abrupt termination of service without compliance of section 25-F of the I.D. Act amounted to retrenchment for which no compensation or notice was given. The person junior to her were retained in service for a period

of more than two months after her termination. This was a clear cut violation of the terms and conditions of the Industrial Disputes Act and the workman who was regular employee deserve to be absorbed on regular basis. She should therefore, be held illegally terminated and reinstatement with full back wages may be ordered to be paid to her.

9. A careful perusal of the points urged leads me to the main point that this Health Centre is subordinate office of the Government of India Ministry of Health. Any appointment of clerical nature and above was governed by the rules of the Government of India and any recruitment made through Employment Exchange does not entitle any employee to claim permanency on that post. The appointments to these posts are made to the Selection through the Selection Board and not direct by any Centre or its Head. In the appointment letter it was clearly written that her services were purely temporary and could be terminated without any notice. The vacancy has been filled due to the going on deputation of I.D.C. already working there and the procedure of the Government for inviting candidates from the Employment Exchange had been followed. The employment given by the Employment Exchange in any Government Department where the Civil Service Rules were applicable does not entitle to that employee to the protection of I.D. Act and the right forum for him is only Central Administrative Tribunal the door of which he should have knocked. I, therefore, do not find any ground to interfere regarding the termination of the workman and order that the workman is at liberty to go to the Appropriate forum for redress of her grievance. Parties are left to bear their own costs.

GANPATI SHARMA, Presiding Officer

July 3, 1992.

नई दिल्ली, 28 जुलाई, 1992

का.स्रा. 2224—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी पी डब्ल्यू डी, नई दिल्ली के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में 'निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के संघर्ष को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-7-92 को प्राप्त हुआ था।

[सं. एल-42012/86/88-डी.-II(बी.)]

के.वी.बी. उणी, डेस्क अधिकारी

New Delhi, the 28th July, 1992

S.O. 2224.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of CPWD, New Delhi and their workmen, which was received by the Central Government on 27th July, 1992.

[No. L-42012/86/88-D.II.B]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

I.D. No. 52/89

In the matter of dispute between :

Shri Radhey Lal S/o Shri Banwari Lal,
House No. 1231, Kucha Patiram,
Bazar Sita Ram, Delhi-6.

Versus

Executive Engineer,

2020 GI/92—9

'A' Division,
Central Public Works Department,
Indraprastha Bhawan,
Indraprastha Estate,
New Delhi-110002.

APPEARANCES :

Workman—in person.

Shri U. M. Kalra—for the management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-42012/86/88-D-2(B) dated 24th May, 1989 has referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management of CPWD 'A' Division, New Delhi in terminating the services of Shri Radhey Lal S/o Late Shri Banwari Lal w.e.f. 16th December, 1979 is justified? If not, to what relief the workman is entitled?"

2. Radhey Lal workman in his statement of claim alleged that he joined the service with the management vide letter dated 26th March, 1973 as Baledar after due procedure. Initially, he was getting Rs. 70 as salary and was posted at IA sub-division. He at his initial place of posting was shocked to find that two Jr. Engineers, namely Shri Harish Chand and Shri Mateen, along with Shri Lajpat Rai, Head Clerk, were indulging in immoral and illegal activities like drinking and womenising in the office premises after office hours. They also used to retain the workman for keeping watch over outsiders who might come unexpectedly. The workman protested against such activities and informed the superior officers and was then transferred to 2A sub-division because of the influence of the said persons and without payment of salary for September, October and November, 1973. Even after the said transfer the management continued to harass the workman and the said officers were marking time and looking for an opportunity to victimise the workman because of his courage to complaint against his superior officials. In 1975 the workman fell ill seriously and he started sending his leave application supported by medical certificate. After recovery he reported for duty but to his horror he was not allowed to join the duties. Vide application dated 29th April, 1976 he asked for opportunity to see Assistant Engineer but no opportunity was given. He continued writing letters to report for duty but was not allowed. With great difficulty he submitted his joining report on 10th October, 1977 and informed the same fact to the Assistant Engineer, 3A, Sub-Division. In the meantime an alleged charge sheet was served upon him and with vague and wild allegations without any specific particulars. The misconduct alleged to have been indulged in by the workman were also not covered by the service conditions applicable to the workman. His services were terminated without any enquiry after the said charge sheet which clearly showed the mala fide and vindictive attitude of the management towards the workman. However, he filed an appeal against the said termination order which was allowed by the Appellate Authority and the order was reversed. An opportunity of hearing was also ordered to be given to the workman and proper departmental enquiry as per rules/service conditions was ordered. The dismissal had been set aside but salary was still not paid to the workman despite the specific demand vide letter dated 10th July, 1971. An enquiry was held but the same was merely an eye wash and a formality for victimising the workman. The Enquiry Officers were biased. The presenting officer asked leading and suggestive questions to the witnesses for management. The Presenting Officer was an Engineer who was well conversant with the enquiry proceedings and no well versed employee was willing to represent the workman. The workman because of his financial condition was not in a position to engage the services of a legally qualified person during enquiry. Workman was not given the documents which were material for the enquiry and which were within the exclusive possession of the management despite asking for the same. The finding of the Enquiry Officer: were not correct and were liable for reversal. The workman further alleged that even assuming, though not admitting, that the charges levelled against the workman stood proved even then the penalty of dismissal was not called for and was clearly disproportionate to the facts and circumstances of the case.

3. After receiving the enquiry report from the Enquiry Officer the management sent a notice to the workman regarding the proposed punishment of dismissal to which he sent a detailed reply. No action was taken on the finding of the alleged enquiry for four years and the workman was continuously harassed. He was transferred many times from one place to the other and every attempt was made to stop him from resuming the duties and submitting the joining report. The management finally passed the dismissal order and notice was served on the workman. The said dismissal order was passed retrospectively and was effective from 16th December, 1979 whereas the dismissal letter was passed on 7th December, 1983. The management could not pass the retrospective dismissal order which was contrary to statutory rules regulations and to establish provisions of law. The workman deserves to be reinstated in service as the termination was illegal with full back wages and continuity of service.

4. The management in its written statement alleged that the claim petition was not maintainable because similar petition on the same cause of action has been dismissed by this court in LCA No. 30/80 and LCA No. 8/83. The Hon'ble High Court has also dismissed a Civil Appeal and his claim deserves to be dismissed. On merits it was alleged that the workman absented himself from service of the respondent in the month of September, October and November, 1973. He did not have any leave to his credit and he joined duty after 4 to 5 months. The Management condoned his mistake and granted him extra ordinary leave and it was also denied that the Jr. Engineer and the Head Clerk were indulging in unsocial activities in the premises of the office and the allegation was only scandalous. No complaint was made by him. It was also denied that the petitioner was not allowed to resume duty without any reason. He had absented from duty from a longer spell Charge sheet was also issued to him and his services were terminated. He was given another chance to disprove the allegations against him and the dismissal order dated 26th November, 1977 was withdrawn. He was allowed to appear in the enquiry proceedings which was conducted in a fair and legal manner. No illegality was committed in the enquiry proceedings. He was heard on the question of quantum of punishment and the dismissal order was passed by the competent authority.

5. I have heard representative for the parties and have gone through the record.

6. The representative for the management has urged that the services of the workman were terminated due to his unauthorised absence from duty and there was nothing on record to suggest that management was vindictive against him and his services were terminated only on illegal grounds and in an illegal manner. He has further alleged that Civil Writ petition No. 308/85 was filed by the workman in Delhi High Court which was dismissed. The representative has further urged that the workman was precluded from instituting any fresh claim in respect of such subject-matter which has already been dismissed by the Hon'ble High Court which fact he has admitted in his cross-examination wherein he stated that he had filed writ petition in the High Court in respect of this very claim and he was trying to undo the judgment of the High Court by filing this I.D. and other ICAs. The workman had absented from duty for 3 months when he had no leave to his credit but as a gesture of goodwill the management condoned his mistake and granted extra-ordinary leave to him. Nothing wrong could be found by the workman in the enquiry proceedings and the management has established that the enquiry was fair and proper and the services were terminated according to rules.

7. The workman in his written arguments has not urged anything except repeating the facts stated by him in the statement of claim. No ground has been shown in his arguments except that he has been harassed by the management for his having made complaints against senior officers.

8. A careful perusal of the points urged by the workman and the representative for the management. I am of the considered opinion that a proper departmental enquiry was conducted in this case and services of the workman were terminated after giving him due opportunity. No illegality has been brought to my notice by the workman and no such illegality

has been brought out in the written arguments submitted by him. In his statement of claim he has only urged that even though if the enquiry was found to be fair the punishment granted to him was very harsh. I have applied my mind to the circumstances of this case and the points urged before me and the record produced. The workman has admitted that he had gone to the Hon'ble High Court on this very point and his petition has since been dismissed. I do not find any reason to interfere in the punishment awarded to him as the matter as stated by the workman himself has been looked into by the Hon'ble High Court and the workman himself has also not stated this fact in his statement of claim when he came to this court. He should have come with clean hands and should have stated that he had filed a writ petition in the Hon'ble High Court a copy of the same dated 3rd May, 1985 vide which the petition of the workman was dismissed has been placed on record and it states that due to serious dispute question of facts it would not be proper for the Hon'ble High Court to go into them under Article 226 of the Constitution. Leaving aside this aspect the points brought out by the management clearly establish that there is no illegality on the part of the management established in this case on the basis of which the dismissal/termination of his services could be interfered with by this Tribunal. I, therefore, order that the order of termination of services was legal and no interference was called for. Parties are, however, left to bear their own costs.

June 23, 1992.

GANPATI SHARMA, Presiding Officer

नई दिल्ली 28 जुलाई 1992

का.प्र. 125 - औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) के भाग 17 के अनुसूचि में, केन्द्रीय सरकार से एम.एम. (एम.टी. आर.) किडवाई भवन, नई दिल्ली के प्रबंधन के संबंध में निम्नलिखित शीर्षक वाले कार्यवाही के प्रारंभ के संबंध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पक्षों का प्रकाशित करने हेतु, जो केन्द्रीय सरकार का 27-7-92 का प्रत्येक हुआ था।

[T. एन. 40012/33/88-डो. II (बी)]

के सं. सं. उपा. ई.क. अधिकारी

New Delhi, the 28th July, 1992

S.O. 2225.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of C.M.M. (MTR) Kidwai Bhawan, New Delhi and their workmen, which was received by the Central Government on 27th July, 1992.

[No. L-40012/33/88-D-II-B]

K.V.B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL, NEW DELHI

I.D. No. 44/89

In the matter of dispute :

BETWEEN

Shri Chotey Lal S/o Shri Bankey Lal, resident of P&T Tents Tibia College Compound, Ajmal Khan Road, Karol Bagh, New Delhi.

VERSUS

1. The G.M.M. (MTR), Kidwai Bhawan, 2nd floor, Janpath, New Delhi.

2. Asstt. Divisional Engineer, Telecommunications, Microwave Maintenance, B-Block, New Rajinder Nagar, New Delhi.
3. The Ministry of Telecommunication through its Secretary, New Delhi.

APPEARANCES:

Miss Bharti—for the workman.

Shri M. M. Kalra—for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-40012/33/88-D.II(B) dated 24th April, 1989 has referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management of G.M.M. (M.T.R.) Kidwai Bhawan, Janpath, New Delhi in terminating the services of Shri Chhote Lal, daily rate mazdoor is justified. If not to what relief the workman is entitled to?"

2. The workman Chotey Lal in his statement of claim alleged that he was appointed as a Helper on 21-10-85 by the department of Telecommunication and was posted under the Assistant Divisional Engineer. The work done by the applicant was of permanent nature and, therefore, he worked on the post of helper from 21-10-85 to 27-7-87. His services were terminated vide order dated 22-7-87. He had been recruited from Employment Exchange and his termination was in disregard to the provisions of section 25-F of the I.D. Act which stipulates that the retrenchment compensation has to be paid before termination of the services. He has already worked for one year and 7 months and all casual workers who have worked for more than 240 days have to be absorbed and their services cannot be terminated. The services have been terminated illegally and another worker, Shri Shyam Singh Rawat who was also working in the capacity of the petitioner was terminated in similar circumstances and he approached to the Central Administrative Tribunal where his claim was allowed and the order of termination was quashed vide judgment dated 23-12-88. The workman termination be also set aside and he may be reinstated with consequential benefits.

3. The Management in its reply alleged that that the workman has not come to the court with clean hands and has tried to conceal material facts. A notice dated 17-6-87 on the workman was served where he was informed about his retrenchment as per provisions of section 25F of the I.D. Act. He was originally recruited on casual basis and his services were terminated after one month's notice. After observing all necessary formalities. The Hon'ble Supreme Court had ordered to the department to finalise rational scheme for absorbing the casual labours working for more than one year and the workers employed after 30-3-85 were not covered under the scheme of regularisation. The workman, therefore, could not be adjusted as daily rated mazdoor even in the said scheme.

4. The management in support of its case examined Shri K. C. Aggarwal, DET Jaipur MW1 while Shri Chotey Lal workman himself appeared as WW1.

5. I have heard the representative for the parties and have gone through the record.

6. The representative for the workman has urged that the termination of the workman was illegal because of the violation of section 25-F of the I.D. Act. No notice of compensation was given as stated by the workman in his statement of claim as well as in his affidavit. He has referred to the Central Administrative Tribunal judgment in case Shyam Singh Rawat Vs. U.O.I. vide which he was ordered to be reinstated. He has also referred to a copy of the judgment in a writ petition of the Hon'ble Supreme Court wherein the Hon'ble Supreme Court has directed the respondents to prepare a scheme on rational basis for absorbing as far as possible the casual labourers who have been

continuously working for more than one year in the Posts and Telegraphs Department. The workman should have been absorbed as per that direction, and he now deserves to be reinstated with full back wages.

7. On careful perusal of the points urged I am of the view that there is no competency between the case Shyam Singh Rawat decided by the Central Administrative Tribunal and this case. That Tribunal has to take decision on the merits of the case while this Tribunal has to decide the case on the basis of the evidence produced before it. The judgment of the Hon'ble Supreme Court is also regarding a scheme to be formed in the Posts and Telegraphs Department. This department of the workman is Telecommunication Department and it has been stated that a scheme was framed and the workman did not fall in that scheme. There is no order of the Hon'ble Supreme Court in particular regarding this workman to be absorbed in the said scheme. Moreover, the only ground on which the workman termination has been challenged is that violation of section 25-F of the I.D. Act was committed. It has been stated on oath by the management witness and has been so stated in the affidavit that one month notice was given to the workman prior to the termination which was the requirement of section 25-F. Annexure I is the copy of the said notice which is signed by this workman as well as one of his colleague Harish Chander Bhatt. There is thus no violation of any provision of the I.D. Act on the basis of which the order of termination of the workman could be set aside and the workman could be reinstated. I, therefore, hold that the order of the management terminating the services of the workman was justified and he was not entitled to any relief.

Parties are left to bear their own costs.

July 2, 1992.

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 28 जुलाई, 1992

का.प्र. 2226.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेन्ट्रल सीडब्लू व वाटर कन्सर्वेशन रिसर्च और ट्रेनिंग सेंटर, उदयगमंगलम के बंधुत्व के संघर्ष नियाजकों और उनके कर्मचारों के बीच, अनुवध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, मद्रास के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-7-92 को प्राप्त हुआ था।

[सं. एल-42011/19/91-आई आर (डी यू)]

के० वा० बो० उम्पो, डैस्क अधिकारी

New Delhi, the 28th July, 1992

S.O. 2226.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Madras as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Central Soil and Water Conservation Research and Training Centre, Udhagamangalam and their workmen, which was received by the Central Government on 27-7-92.

[No. L-42011/19/91-IR(DU)]

K.V.B. UNNY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU, MADRAS

Monday, the 13th day of July, 1992

PRESENT:

Thiru M. Gopalaramy, B.Sc., B.L., Industrial Tribunal.

Industrial Dispute No. 71 of 1991

[In the matter of the dispute for adjudication under section 10(1)(d) of the Industrial Disputes Act, 1947 between the workmen and the management of Central Soil and Water Conservation Research and Training Institute, Research Centre, Fernhill P.O. Udhagamandalam-643004.]

vation Research and Training Institute, Research Centre, Fernhill P.O. Udhagamandalam-643004.

BETWEEN

The workmen represented by the President, Electricity and General Employees Progressive Union 80, Cross Bazar, Coonoor-2, The Nilgiris.

AND

The Officer-in-Charge, Central Soil and Water Conser-

REFERENCE:

Order No. L-42011/19/91-IR(DU), dated 30-10-91 of the Ministry of Labour, Government of India New Delhi.

This dispute coming on this day for final disposal in the presence of Thiru A. Ashokan, Advocate appearing for the workmen upon perusing the reference, claim statement and other connected documents on record and the management being absent and set ex parte, this Tribunal passed the following:

AWARD

This dispute between the workmen and the management of Central Soil & Water Conservation Research and Training Institute, Research Centre, Udhagamandalam arises out of a reference under section 10(1)(d) of the Industrial Dispute Act, 1947 by the Government of India in its Order No. L-42011/19/91-IR(DU), dated 30-10-1991 of the Ministry of Labour, for adjudication of the following issue:

‘Whether the management of Central Soil and Water Conservation Research & Training Institute is justified in not regularising the services of 54 workmen (list enclosed)? If not, what relief they are entitled to and from what date?’

Revised consolidated seniority list of mazdoors based on total number of days present right from their year of entry.

Sl. No.	Name	Father's name	Year of entry	Total No. of days from year of entry upto 31-12-1988	SC/ST/BC.	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	Smt. M. Nanjamma	Madan	1974	3853	SC	
2.	Smt. Pappammal	Ponnuswamy	1974	3681-1/2	SC	
3.	Smt. Chandrasekhar	Manickam	1975	3549	SC	
4.	Sri S. Lakshmanan	Sirangi Gowder	1976	3298-1/2	—	
5.	Sri K. Nanjan	Kulla Gowder	1974	3234-1/2		
6.	Smt. D. Alice	David	1974	3136	SC	
7.	M. Balakrishnan Nair.	M. Sankaran Nair	1977	3000		
8.	R. Rajamani	Rama Gowder	1974	2943-1/2	—	
9.	Sri D. Sowrymuthu	Devasahayam	1977	2288		
10.	Smt. Anthoniammal	W/o A. Das.	1977	2859		
11.	Sri N. Bheeman	Manja Gowder	1974	2814-1/2	—	
12.	Sri P. Chinniah	Perumal	1977	2755-1/2	SC	
13.	Sri G. Kannian	Gnanavasagam	1977	2668	SC	
14.	S. Sankaran	Seluviah	1977	2629-1/2	SC	
15.	Sri K. Balaraman	Kakkamallan	1974	2546		
16.	Sri C. Nanjan	Chokka Gowder	1974	2470-1/2		
17.	Smt. P. Lakshmi	Perumal	1979	2440	SC	
18.	Sri A. Soundararajan	Ambrose	1978	2432-1/2		
19.	R. Lingiah	Ramiah	1977	2431-1/2	SC	
20.	Smt. D. Sivalakshmi	W/o K. Neelan	1977	2326-1/2	SC	
21.	Sri L. Rajappa	Linga Gowder	1974	2205-1/2		
22.	Sri C. Gunalan	Chokka Gowder	1974	2202	—	
23.	Sri A. Devaraj	C. Antony	1978	2181-1/2		
24.	Sri N. Rajappan	Nandhi Gowder	1974	2110		
25.	T. Govindan	Thimmanna	1980	2098-1/2	SC	
26.	Sri J. Thangaraj	Joghee Gowder	1978	2034-1/2		

(1)	(2)	(3)	(4)	(5)	(6)	(7)
27.	Sri S. Sunderraj	Sivaiah	1980	1913	--	
28.	M. Veluswamy	Maruthachalam	1981	1830		
29.	Sri R. Chandran	Rangappan	1980	1823	SC	
30.	Sri A. Marimuthu	Arumugam	1980	1808-1/2	SC	
31.	Smt. Neelayathi	Doddhathamma	1980	1791-1/2	SC	
32.	Sri A. Perannan	Arumugam	1980	1722		
33.	S. George Vincent	Savarimuthu	1981	1495		
34.	Sri K. Bheeman	Kakkamallan Gowder	1980	1154	SC	
35.	Smt. P. Sadasu	Perumal	1983	1355	SC	
36.	Smt. Rajamani	Jothimuthu	1983	1311-1/2	SC	
37.	Sri S. Natesan	Selvaraj	1984	947-1/2	SC	
38.	Smt. T. Rani	Thimmaiah	1984	936	SC	
39.	Smt. Vunaia	Chinnaswamy	1984	899-1/2	SC	
40.	Sri B. Lakshmanan	Nanjundeib	1984	867		
41.	Sri K. Radhakrishnan	Kuttan	1984	627-1/2	-	discontinued.
42.	Sri N. Gunasekharan	Nayagam	1978/ 1985	613-1/2		discontinued during 1984
43.	Smt. Parvathi	Marimuthu	1986	505	SC	
44.	Sri K. Maniraj	Krishna Gowder	1984	549-1/2		
45.	M. Viswanathan	Marian	1985	512	SC	
46.	Sri C. Kuppuswamy	Chinnaswamy	1986	486	SC	
47.	Sri N. Kumar	Narayanaswamy	1986	474		
48.	Smt. Vasantha	W/o Ekambaram	1986	454	—	
49.	Sri S. Sekar	Seluviah	1987	398	SC	
50.	Sri R. Srinivasan	Rangappan	1987	398	SC	
51.	Sri K. Srinivasan	Krishnan	1987	313-1/2	SC	
52.	Sri M. Ravi	Mayannan	1987	287	SC	
53.	Kumari Sonia	Gabriel	1987	128	-	
54.	Sri R. Vijayakumar	Rangan	1987	123	SC	

(2) Parties were served with summons.

(3) The Petitioner-Union filed its claim statement praying to regularise the employees in the list appended to the notification of the Government with the appropriate scale of pay and amenities applicable to them from the date of their joining.

(4) In spite of several adjournments, the Respondent-Management did not file counter statement. No representation was made on its behalf. Hence the management was set ex parte.

(5) Today, on behalf of the workmen, Thiru M. Manickam, the President of the Petitioner-Union is examined as W.W.I. The seniority list of workers is marked as Ex. W-I though him. Claim is proved.

(6) Award is passed directing the Respondent to regularise the appointment of 54 workmen as mentioned in the reference. No costs.

Dated, this 13th day of July, 1992.

THIRU M. GOPALASWAMY INDUSTRIAL TRIBUNAL.

WITNESSES EXAMINED

For workmen

W.W.I.- Thiru M. Manickam

For Management

None.

DOCUMENTS MARKED

For workmen

Ex. W-1—Seniority list of Workmen

For management

Nil.

नई दिल्ली, 28 जुलाई, 1992

नई दिल्ली, 28 जुलाई, 1992

क्र.आ. 22-7- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार विविक्तता रेलवे मानेकर उत्तर रेलवे क्षेत्रों में प्रवर्धन के संबंध में निम्नलिखित औद्योगिक कर्मचारियों के बीच, पटवारा में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम, 1947 के प्रावधानों का प्रकाशित करता है, जो केन्द्रीय सरकार की 27-7-92 को प्राप्त हुआ था।

[न. एम-41012/75/89-आई आर (ग यू.)]

के. वी. बी. उन्नी, डेस्क अधिकारी

New Delhi, the 28th July, 1992

S.O. 2227.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of Divisional Rly. Manager, Northern Rly. Lucknow and their workmen, which was received by the Central Government on 27-7-92.

[No. L-41012/75/89-IR(DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SRI ARJAN DEV PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
DEOKI PALACE ROAD PANDU NAGAR KANPUR

Industrial Dispute No. 313 of 1989

In the matter of dispute between

General Secretary,

Purvottar Rly. Shramik Sangh,

6 Navin Market,

Kaisarbagh,

Lucknow.

AND

The Divisional Railway Manager,

N.E.R. Ashok Marg,

Lucknow

AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L-41012/75/89-IR(DU) dt. 13-12-89, has referred the following dispute for adjudication to this Tribunal.—

Whether the action of Divisional Rly. Manager North Eastern Railway Lucknow was justified in terminating the services of Sri Om Prakash Srivastava w.e.f. 30-4-84 is justified? If not, what relief the workman is entitled to?

2. In this case 2-7-92 was fixed for filing of affidavit evidence in the case. On the said date Sri Tewari authorised representative for the Union submitted before the Tribunal that the workman did not turn up him despite his writing to him. To me the above submission of Sri Tewari does not seem to be plausible explanation, and I am inclined to believe that the Union is not interested in prosecuting the case of the workman. On 25-9-91, 18-11-91 or fixed for filing of affidavit evidence.

3. Therefore, in view of the above a no claim award is given in the case.

4. Reference is answered accordingly.

ARJAN DEV, Presiding Officer

क्र.आ. 22-7- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार विविक्तता रेलवे मानेकर उत्तर रेलवे क्षेत्रों में प्रवर्धन के संबंध में निम्नलिखित औद्योगिक कर्मचारियों के बीच, पटवारा में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम, 1947 के प्रावधानों का प्रकाशित करता है, जो केन्द्रीय सरकार की 27-7-92 को प्राप्त हुआ था।

[न. एम-41012/24/87-डीआई (बी.पी.टी.)]

के. वी. बी. उन्नी, डेस्क अधिकारी

New Delhi, the 28th July, 1992

S.O. 2228.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Central Railway, Jhansi and their workmen, which was received by the Central Government on 24-7-92.

[No. L-41012/24/87-DII(B)(Pt.)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING
OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL

NEW DELHI

I.D. No. 81/88

In the matter of dispute between:

Km. Meera Tandon,

through Shri Suresnder Singh,

Secretary, I.N.T.U.,

C.(3.5)2/236 Namner, Agra.

Versus

Divisional Railway Manager,

Central Railway,

Jhansi.

APPEARANCES:

Shri Suresnder Singh—for the workman.

Shri A. N. Sharma—for the management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-41012/24/87-D-II(B) dated 5-8-88 has referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the Management of Divisional Railway Manager, Central Railway, Jhansi in terminating the services of Km. Meera Tandon Social Guide w.e.f. 1-5-1985 is justified? If not, to what relief the workman is entitled?"

2. Km. Meera Tandon, the workman in her statement of claim alleged that she was appointed as clerk/announcer w.e.f. 22-2-82 under the Station Superintendent, Central Railway, Agra Cantt. Like the workman other ladies were also appointed like Smt. Saroj from 27-9-82, Sushila from 28-9-82, Hailon from 14-10-82 and Rajesh Srivastav from 14-10-82. Two other ladies namely Asha and Rekha were appointed in 1983 and 4-3-85 respectively. They are still in the employment of the management. The applicant workman worked for a period of more than 240 days as social guide. Her services were terminated without assigning any reason,

Mahesh Vs. Bhakra Beas Management Board.
For the Workman : Shri R. K. Singh.
For the Management : Shri C. Lal.

AWARD

Central Govt. vide gazettee notification No. L-42012/5/91-IRDU dated 20th September 1991 issued U/S 10(1)(d) of the I. D. Act 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Bhakra Beas Management Board in terminating the services of Shri Mahesh s/o Shri Kirpal is justified? If not, to what relief is the workman concerned entitled?"

2. Present case was taken up today at Nangal on day to day hearing. Sh. Mahesh the petitioner has filed settlement Ex. C1 and endorsed it while making statement. In Ex. C1 he has stated that the dispute has been settled with the Management and case be allowed to withdrawn and this has been done with the free consent and proper understanding.

Mr. Harmesh Chand appearing on behalf of the Respdnt. Management has also made similar statement and also stated that the petitioner will be taken on duty on daily wages without any back benefits. Whenever his turn will come his services will be regularised. He has also stated that upon taken on daily wages his services will not be terminated illegally.

In view of the statement made by the respective parties and the settlement Ex. C1 and condition stated by the rep. of the management, present reference is disposed off accordingly and returned to the Ministry.

ARVIND KUMAR, Presiding Officer

Chandigarh.

Camp at Nangal
22-5-1992.

नई दिल्ली, 28 जुलाई, 1992

का.प्र. 2231.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सरकार द्वारा संचालित ज्योतिपुरा में प्रयोग, उपनिर्माण के प्रबंधन के संबंध में निदेशों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चंडीगढ़ के पंचट को प्रकाशित करने हैं, जो केन्द्रीय सरकार को 27-7-92 को प्राप्त हुआ था।

[नं. एन-42011/1/90-आई प्रार. (ओ यू)]

का.प्र. 2231.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सरकार द्वारा संचालित ज्योतिपुरा में प्रयोग, उपनिर्माण के प्रबंधन के संबंध में निदेशों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चंडीगढ़ के पंचट को प्रकाशित करने हैं, जो केन्द्रीय सरकार को 27-7-92 को प्राप्त हुआ था।

New Delhi, the 28th July, 1992

S.O. 2230.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Salal Hydro Electric Project Jyotipuram and their workmen, which was received by the Central Government on 27-7-92.

[No. I-42011/4/90-IR(DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI ARVIND KUMAR PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL-cum-
LABOUR COURT, CHANDIGARH

Case No. I. D. 155/90

Workmen Vs. S.H.F.P

For the workman : None

For the management : Shri V. K. Gupta.

AWARD

Central Govt. vide gazettee notification No. L-42011/4/90-IR(DU) dated 17th October 1990 issued U/S 10(1)(d) of the I. D. Act 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Salal Hydro-electric Project, Jyotipuram in denying the promotion of the Foreman in pay scale of Rs. 550-900 to pay scale of Rs. 650-1200 against the terms of settlement dated 6-5-87 is justified ? If not to then what relief the workmen are entitled to and from what date?"

2. In the present case earlier rep. is not appearing on behalf of the petitioner. Various registered notices were issued to the workmen but none put up appearance. Present reference is dismissed in default and returned to the Ministry.

Chandigarh.

Camp Jammu

24-4-1992.

ARVIND KUMAR, Presiding Officer

नई दिल्ली, 28 जुलाई, 1992

का.प्र. 2231.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सरकार द्वारा संचालित ज्योतिपुरा में प्रयोग, उपनिर्माण के प्रबंधन के संबंध में निदेशों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चंडीगढ़ के पंचट को प्रकाशित करने हैं, जो केन्द्रीय सरकार को 27-7-92 को प्राप्त हुआ था।

[नं. एन-42012/70/91-आई प्रार. (ओ यू)]

के.वी.बी. उन्नी, डेस्क अधिकारी

New Delhi, the 28th July, 1992

S.O. 2231.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bhakra Beas Management Board, Nangal Township and their workmen, which was received by the Central Government on 27-7-92.

[No. L-42012/70/90-IR(DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI ARVIND KUMAR PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL-cum-
LABOUR COURT, CHANDIGARH

Case No. I. D. 186/90

Shiv Shankar Vs. Bhakra Beas Management Board.

For the workman : Shri R. K. Singh.

For the management : Shri C. Lal.

AWARD

Central Govt. vide gazettee notification No. L-42012/70/90 IRDU dated 29th November 1990 issued U/S 10(1)(d) of the I. D. Act 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of BBMB Bhakra Dam Nangal Township in denying employment to Shri Shiv Shankar son of Shri Ram

Dularey Skilled Labour in their Rose Garden Section of the Bhakra Dam Division w.e.f. 1-3-89 is legal and justified? If not to what relief the concerned workman is entitled and from what date?"

2. Present case was taken up at Nangal on day to day hearing basis Mr. R. K. Singh A/R of the workman has made statement that workman is not traceable and therefore, he does not want to pursue with the present reference and same may be returned to the Ministry.

In view of the statement made by Shri R. K. Singh A/R of the workman, present reference is returned to the Ministry.

Chandigarh.

Camp Nangal

21-5-1992.

ARVIND KUMAR, Presiding Officer

नई दिल्ली, 28 जुलाई, 1992

का.सं. 2232—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, साकड़ा विद्युत सैनधमन्ट के प्रबंधन के संवर्धन नियोजको और उनके कर्मचारियों के बीच अनुवर्ध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नंगल पंचायत को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-7-92 को प्राप्त हुआ था।

[सं. एल-42012/67/88-डो-II (बो)]

के.वी.बी. उन्नी, डेस्क अधिकारी

New Delhi, the 28th July, 1992

S.O. 2232.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bhakra Beas Management Board, Nangal Dam and their workmen, which was received by the Central Government on 27-7-92.

[No. L-42012/67/88.D.II(B)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI ARVIND KUMAR PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL-cum-
LABOUR COURT, CHANDIGARH

Case No. I. D. 91/89

Narinder Kumar Vs. Bhakra Beas Management Board.

For the workman Shri R. K. Singh

For the management : Shri C Lal.

AWARD

Central Govt. vide gazettee notification No. L-42012/67/88-D2(B) dated 24th May 1989 issued U/S 10(1)(d) of the I. D. Act 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the action of the Es. Eng., BBMB Nangal Dam in terminating the services of Shri Narinder Kumar on daily wages w.e.f. 24-4-86 is legal and justified? If not, to what relief the concerned workman entitled and from what date?"

2. Present case was taken up at Nangal on day to day hearing basis. Mr. R. K. Singh authorised representative of the workman has made statement that they do not want to pursue with the present reference and same may kindly be returned to the Ministry.

2020 GI 92—10

In view of the statement made by the rep. of the workman Shri R. K. Singh the present reference is returned to the Ministry.

Chandigarh.

Camp Nangal

21-5-92

ARVIND KUMAR, Presiding Officer

नई दिल्ली, 28 जुलाई, 1992

का.सं. 2233—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार साकड़ा विद्युत सैनधमन्ट के प्रबंधन के संवर्धन नियोजकों और उनके कर्मचारियों के बीच अनुवर्ध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नंगल पंचायत को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-7-92 को प्राप्त हुआ था।

[सं. एल-42012/20/91-आईआर (डीयू)]

के. वी. बी. उन्नी, डेस्क अधिकारी

New Delhi, the 28th July, 1992

S.O. 2233.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bhakra Beas Management Board, Nangal Township, and their workmen, which was received by the Central Government on 27-7-92.

[No. L-42012/20/91.IR(DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI ARVIND KUMAR PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL-cum-
LABOUR COURT, CHANDIGARH

Case No. I. D. 125/91

Govind Singh Vs. B.B.M.B.

For the workman : Shri R. K. Singh

For the management : Shri C. Lal.

AWARD

Central Govt. vide gazettee notification No. L-42012/20/91-IR DU dated 26th of September 1991 issued U/S 10(1)(d) of the I. D. Act 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the action of the Chief Engineer, Bhakra Beas Management Board, Nangal Township, in terminating the services of Shri Govind Singh son of Shri Bir Singh, w.e.f. 1-7-87, is legal and justified? If not, to what relief the concerned workman is entitled and from what date?"

2. Present case was fixed at Nangal on day to day hearing basis. Mr. S. P. Shah appearing on behalf of the workman Govind Singh has made statement that matter has been amicably settled with the respdt management and no dispute award be passed.

In view of the statement made by Shri S. P. Shah a No dispute Award is returned to the Ministry.

Chandigarh

Camp at Nangal

ARVIND KUMAR, Presiding Officer

नई दिल्ली, 3 अगस्त, 1992

का.प्र. 4234.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) का धारा 17 के अनुसूचन में, केन्द्रीय सरकार द्वारा विद्यमान रेलवे मैनज्ग सेन्ट्रल रेलवे, प्रमो के प्रवर्तन के संबंध विद्यमान और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचम को प्रकाशित करता है, जो केन्द्रीय सरकार का 31-7-92 का आदेश हुआ था।

[स एन-41012/22/87-ड-4 (ए) आई आई (आ.पू.)]

के वा. बो. उम्मा, डेस्क अधिकारी

New Delhi, the 3rd August, 1992

S.O. 2234.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Divisional Railway Manager, Central Railway, Jhans and their workmen, which was received by the Central Government on 31-7-92.

[No. L-41012/22/87-D-4(A)/IR(DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL, NEW DELHI

I. D. No. 79/88

In the matter of dispute between :

Smt. Shashi Kiran Dubey, Through Shri Surender Singh, INTUC (U.P.), 2/236, Namnair, Agra.

Versus

Divisional Railway Manager, Central Railway, Jhansi.

APPEARANCES :

Shri Surinder Singh—for the workman.

Shri A. N. Sharma—for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-41012/22/87-D 4(A) dated 22-7-88 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the Management of Divisional Railway Manager Central Railway, Jhansi in terminating the services of Smt. Shashi Kiran Dubey, Social Guide w.e.f. 1-5-85 is justified? If not to what relief the workman is entitled?"

2. Smt. Shashi Kiran Dubey, the workman in her statement of claim alleged that she was appointed as clerk/announcer w.e.f. 26-7-82 under the Station Superintendent, Central Railway, Agra Cantt. Like the workman other ladies were also appointed like Smt. Saroj from 27-9-82, Sushila from 28-9-82, Hailen from 14-10-82 and Rajesh Srivastav from 14-10-82. Two other ladies namely Asha and Rekha were appointed in 1983 and 4-3-85 respectively. They are still in the employment of the management. The applicant workman worked for a period of more than 240 days as social guide. Her services were terminated without assigning any reason, without payment of any compensation or notice. Other ladies who were appointed later were still working at Bhopal Railway Station though the workman was senior but her services have been terminated and the junior persons were still working there. It was a clear cut violation of the provisions of the I. D. Act and the workman deserves to be reinstated with full back wages.

3. The Management in its written statement alleged that the applicant was not a workman within the meaning of the I. D. Act and the present proceedings were not maintainable. A scheme was introduced to engage Girl Social Guides at Agra Cantt. Railway Station on an Honorarium of Rs. 1.50 per hour (maximum 8 Hrs. in a day) for a short period subject to the condition that she should be a graduate and that her father should be working in Railways in Agra Area vide Orders dated 4-9-1982 issued by the Superintendent Agra Area Central Railway. Consequently, the applicant alongwith others were engaged as Social Guides after holding of a viva voce test and there was no regular employment. It was a purely local arrangement from amongst daughters of the railway employees working in Agra Area. No Girl guide by the name of Smt. Rekha was appointed and the dates of engagement of other Social Guides in the statement of claim were incorrect. She was not engaged through the Railway Service Commission and such employment does not confer any right upon the applicant for regular employment. The services of the applicant and the other Social Guides were dispensed with as the same had been continued without sanction of the Competent Authority. There was no illegality in the termination nor any violation of the Industrial Disputes Act.

4. The management examined Shri S. B. Singh Chief Reservation Inspector in support of its evidence while the workman appeared as WW-1. I have heard representative for the parties and have gone through the record.

5. Representative for the management has alleged that as alleged by them in the written statement the workman was not appointed on regular basis and was appointed at Rs. 1.50 per hour with a maximum 8 hours duty for a short period. No appointment letter has been produced by the workman to show that she was appointed on any other terms except one stated by the management. Moreover, a notice was sent which clearly laid down that the applicant should be graduate, her father should be working in the Railway in Agra Area. It was on the basis of these terms that selection was made for the Girl Social Guides on honorarium basis. The representative for the workman has asserted that she was paid @ Rs. 12/- per day was not correct because no such appointment letter has been shown by the workman representative and the only notice shown by the Management on the basis of which appointment was made was that she was paid at Rs. 1.50 per hour maximum working hours were to be 8 hours.

6. The representative for the workman on the other hand has urged that once she was appointed and she completed 240 days, she was covered under the provisions of the I. D. Act and her services could not be terminated without due notice and compensation. In this regard he has referred to AIR writ petition No. 3392/1988 Allahabad High Court Lucknow Bench between Baharich Dist. Coop Bank Ltd. Vs Ramesh Chandra Khanna and others in which he has also referred to 1989 Supreme Court Cases (I&S) 565 in which it was held as follows :

"Labour Law—Industrial Disputes Act, 1947—Section 25-F—Termination of service in violation of Section 25-F, held, void ab initio—Acquiesced employee, held, entitled to continuity in service with back wages—Labour Court erred in awarding only one month's pay in lieu of period of notice of retrenchment and compensation—Termination—Back Wages."

7. On careful perusal of the points urged before me, leads me to the conclusion that the applicants were appointed as Announcer/Social Guide at Agra on a honorarium of Rs. 1.50 per hour by the Superintendent Agra Area. It was a purely local arrangement vide Ex. M1 and M2. The fact that she was appointed Enquiry Clerk/Announcer as stated in the statement of claim was not correct. She was not appointed as Enquiry Clerk. There was no question of appointing 4-5 Social Guides at one station for a short term. No documentary evidence has been produced in the form of appointment letter otherwise that she was appointed as Enquiry Clerk. It has been asserted by the workman that they were performing clerical duties but this fact has not been established. The function of the Announcer/Social Guide was to inform the travelling public about the time of arrival and departure

of trains. The announcement on public address system, though based on written script, requires a special talent in the announcer. All the workman appointed under Ex. M1 and M2 were terminated and there was no question of any Junior person having been retained. This has been established by the sworn affidavit of Shri S. D. Singh. The person working at Bhopal Area had nothing to do with the Agra Area because it was an independent office and their control was separate. The seniority of those workman cannot be equated with the seniority of those working in Bhopal. It is not disputed that regular recruitment of the railway department is done through the Railway Public Service Commission and not in the manner this workman was appointed. This workman was appointed under a particular scheme of honorarium and not in the regular basis. She could not claim the benefit of a workman under the Industrial Disputes Act nor could she expect to be absorbed on regular basis by this short cut matter. The appointment through Railway Public Service Commission is made only by public notification of the vacancies which calls for application from the public in general who are eligible for such assignments. This scheme was applicable only for the daughters of the serving railway employees and that too in particular area and was a localised scheme which has not got further sanction from the competent authority. The applicant in this case in my opinion was not entitled to any relief of the reinstatement and the termination was justified. Parties are left to bear their own costs.

GANPATI SHARMA, Presiding Officer.

नई दिल्ली, 3 अगस्त, 1992

का. अ. 2235.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में, केन्द्रीय सरकार विद्युत् रेलवे मैनेजर सेंट्रल रेलवे, आग्रा, के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारियों के बीच, अनुसूच में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम नई दिल्ली के पंचवट का प्रकाशन करती है, जो केन्द्रीय सरकार को 31-7-92 को प्राप्त हुआ था।

[स एल-41012/21/87-डी-2(बी) / (आई आर (डॉ. यू.)]

के. ए. वा. उष्णा, हेल्थ अधिकारी

New Delhi, the 3rd August, 1992

S.O. 2235.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Divisional Railway Manager, Central Railway, Jhansi and their workmen, which was received by the Central Government on 31-7-1992.

[No. L-41012/21/87-D-2(B)|IR(DU)]

K.V.B. UNNY, Desk Officer.

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER: CENTRAL GOVT. LABOUR COURT: NEW DELHI

I.D. No. 19/89

In the matter of dispute between—
Smt. Sushila Prasar, Social Guide,
through Shri Surinder Singh, Secretary,
I.N.T.U.C. (U.P.) Branch,
2/236, Namnair, Agra.

Versus

Divisional Railway Manager,

Central Railway, Jhansi,

APPEARANCES: Shri Suriender Singh for the workman.

Shri A. N. Sharma for the management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-41012/21/87-D.2(B) dated 18-1-89 has referred the following Industrial Dispute to this Tribunal for adjudication:

"Whether the action of the management of Divisional Railway Manager, Central Railway, Jhansi is terminating the services of Smt. Shushila Prasar, Social Guide w.e.f. 1-5-1985 is justified? If not to what relief the workman is entitled?"

2. Smt. Shushila Prasar, the workman in her statement of claim alleged that she was appointed as clerk/announcer w.e.f. 22-9-82 under the Station Superintendent, Central Railway, Agra Cantt. Like the workman other ladies were also appointed like Smt. Saroj from 27-9-82, Km. Neeru Tandon from 22-9-82, Hailen from 14-10-82, Rajesh Srivastav from 14-10-82. Two other ladies namely Asha and Rekha were appointed in 1983 and 4-3-85 respectively. They are still in the employment of the Management. The applicant workman worked for a period of more than 240 days as social guide. Her services were terminated without assigning any reason, without payment of any compensation or notice. Other ladies who were appointed later were still working at Bhopal Railway Station though the workman was senior but her services have been terminated and the junior persons were still working there. It was a clear cut violation of the provisions of the I.D. Act and the workman deserves to be reinstated with full back wages.

3. The Management in its written statement alleged that the applicant was not a workman within the meaning of I.D. Act and the present proceedings were not maintainable. A scheme was introduced to engage Girl Social Guides at Agra Cantt. Railway Station on an Honourarium of Rs. 1.50 per hour (maximum 8 Hrs. in a day) for a short period subject to the condition that she should be a graduate and that her father should be working in Railways in Agra vide Orders dated 4-9-1982 issued by the Superintendent Agra Area Central Railway Consequently, the applicant alongwith others were engaged as Social Guides after holding of a viva voce test and there was no regular employment. It was a purely local arrangement from amongst daughters of the railway employees working in Agra Area. No Girl guide by the name of Smt. Rekha was appointed and the dates of engagement of other Social Guides in the statement of claim were incorrect. She was not engaged through the Railway Service Commission and such employment does not confer any right upon the applicant for regular employment. The services of the applicant and the other social Guides were dispensed with as the name had been continued without

sanction of the Competent Authority. There was no illegality in the termination nor any violation of the Industrial Disputes Act.

4. The Management examined Shri S. B. Singh Chief Reservation Inspector in support of its evidence while the workman appeared as WW1. I have heard representative for the parties and have gone through the record.

5. Representative for the management has alleged that as alleged by them in the written statement the workman was not appointed on regular basis and was appointed at 1.50 per hour with a maximum 8 hours duty for a short period. No appointment letter has been produced by the workman to show that she was appointed on any other terms except one stated by the management. Moreover a notice was sent which clearly laid down that the applicant should be graduate, her father should be working in the Railway in Agra Area. It was on the basis of these terms that selection was made for the Girl Social Guides on honorarium basis. The representative for the workman has asserted that she was paid @ Rs. 12/- per day was not correct because no such appointment letter has been shown by the workman representative and the only notice shown by the Management on the basis of which appointment was made was that she was paid at Rs. 1.50 per hour maximum working hours were to be 8 hours.

6. The representative for the workman on the other hand has urged that once she was appointed and she completed 240 days, she was covered under the provisions of the I.D. Act and her services could not be terminated without due notice and compensation. In this regard he has referred to AIR writ petition No. 3392/1988 Allahabad High Court Lucknow Bench between Baharaich Dist. Coop Bank Ltd. Vs. Ramesh Chandra Khanna and others in which he has also referred to 1989 Supreme Court Cases (I&B) 565 in which it was held as follows :—

“Labour Law-Industrial Disputes Act, 1947—Section 25-F-Termination of service in violation of Section 25-F, held, void ab initio-Agrieved employee, held, entitled to continuity in service with back wages-Labour Court erred in awarding only one month's pay in lieu of period of notice of retrenchment and compensation—Termination—Back Wages.”.

7. On careful perusal of the points urged before me, leads me to the conclusion that the applicants were appointed as Announcer/Social Guide at Agra on a honorarium of Rs. 1.50 per hour by the Superintendent Agra Area. It was a purely local arrangement vide Ex. M1 and M2. The fact that she was appointed Enquiry Clerk/Announcer as stated in the statement of claim was not correct. She was not appointed as Enquiry Clerk. There was no question of appointing 4-5 Social Guides at one station for a short term. No documentary evidence has been produced in the form of appointment letter otherwise that she was appointed as Enquiry Clerk. It has been asserted by the workman that they were performing clerical duties but this fact has not been established.

The function of the Announcer/Social Guide was to inform the travelling public short the time of arrival and departure of trains. The announcement on public address system, though based on written script, requires a special talent in the announcer. All the workman appointed under Ex. M1 and M2 were terminated and there was no question of any junior person having been retained. This has been established by the sworn affidavit of Shri S. D. Singh. The persons working at Bhopal Area had nothing to do with the Agra Area because it was an independent office and their control was separate. The seniority of those workmen cannot be equated with the seniority of those working in Bhopal. It is not disputed that regular recruitment of the railway department is done through the Railway Public Service Commission and not in the manner this workman was appointed. This workman was appointed under a particular scheme of honorarium and not on the regular basis. She could not claim the benefit of a workman under the Industrial Disputes Act nor could she expect to be absorbed on regular basis by this short cut matter. The appointment through Railway Public Service Commission is made only by public notification of the vacancies which calls for application from the public in general who are eligible for such assignments. This scheme was applicable only for the daughters of the serving railway employees and that too in particular area and was a localised scheme which has not got further sanction from the competent authority. The applicant in this case in my opinion was not entitled to any relief of the reinstatement and the termination was justified. Parties are left to bear their own costs.

July 7, 1992.

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 3 अगस्त, 1992

का. घा. 2236—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बदरपुर थर्मल पावर स्टेशन, बदरपुर, नई दिल्ली के प्रबंधन के सबद्ध नियोजकों और उनके कर्मचारियों के बीच, प्रमुख से निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नई दिल्ली के पंचवट को प्रकाशित करती है, जो केन्द्रीय सरकार का 31-7-92 को प्राप्त हुआ था।

[म. एल-42011/6/84-डी-II(बी)/आई. आर.-(आ. व.)]

के. वी. बी. उन्नी, डेस्क अधिकारी

New Delhi, the 3rd August, 1992

NOTIFICATION

S.O. 2236.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Badarpur Thermal Power Station, Badarpur, New Delhi and their workmen, which was received by the Central Government on 31-7-92.

[No. L-42011/6/84-D-II(B)/IR(DU)]

K. V. B. UNNY, Desk Officer.

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING
OFFICER, CENTRAL GOVT. INDUSTRIAL
TRIBUNAL, NEW DELHI

I.D. No. 1/1986

In the matter of dispute between :

Badarpur Power Engineers Association,
(Regd. under the Indian Trade Union Act,
1926),

Badarpur Thermal Power Station,
Badarpur, New Delhi-110044,

through its General Secretary,

Shri Om Prakash,

ro. 835, Chhota Bazar, Kashmere Gate,
Delhi-6.

Versus

Management of Badarpur Thermal Power
Station, Badarpur, New Delhi-110044.

through its General Manager.

APPEARANCES :

Shri Om Parkash for the workmen.

Dr. Anand Parkash with Shri Rajinder Dhawan
for the Management.

AWARD

The Central Government in the Ministry of Labour
vide its Order No. L-42011(6)84-D.II(B) dated
the October, 1985 has referred the following indus-
trial dispute to this Tribunal for adjudication :

"Whether the demand of General Secretary
Badarpur Power Engineers Association
that the Sr. Operator/Jr. Controller, Assis-
tant Controller, Controller, Accountants
Grade I, II, III Senior Accountant, Jr.
Chemists, Supervisors Grade I, II, III and
Sr. Supervisor in Badarpur Thermal
Power Station should be treated as work-
men by the management and should be
consequently paid over time in terms of
provisions of Factories Act, 1948 by the
Management of Badarpur Thermal Power
Station under National Power Corpora-
tion Ltd. is justified? If so, to what other
benefits these categories of workers are
entitled and from when?"

"Whether the demand of the General Secretary
Badarpur Power Engineers Association for
merger of E.1 and E.2 grades with equal
further chances for both by the manage-
ment of Badarpur Thermal Power Station
under N.T.P.C. Ltd., Badarpur is justi-
fied? If so, to what benefits the depart-
mental promotees now in grade E1 are
entitled to and from what date?"

2. In the statement of claim filed by the workmen
in this case it was alleged that the Badarpur Thermal

Power Station was an Industry as defined in the
Industrial Disputes Act, 1947 and also a Factory as
defined in the Indian Factories Act, 1948. It was
engaged in the generation of Power, and it was a
continuous process with public utility service of great
importance. The employees were required to work
round the clock as well as in general shift. From
the last several years i.e. 1-4-1978 management of
Badarpur Thermal Power Station was transferred to
N.T.P.C. Limited for the limited period of 10 years
as a Managing Agent of Government of India.
Since its inception the Management indulged in
unfair labour practices for not providing the protec-
tions and benefits under the provisions of various
industrial laws to other categories of employees i.e.
Senior Operator, Jr. Controller, Assistant Controllers,
Controllers Accountants Grade I, II and III, Senior
Accountants, Supervisors Grade I, II and III, Senior
Supervisors, Junior Chemists etc. All these cate-
gories of employees are workmen as defined under
Section 2(s) of the I.D. Act. The management
arbitrarily did not consider the aforesaid category
as "workmen" nor accorded the benefits to these
categories. This Act of the Management was illegal,
unjust and violative of Section 2(s) of the I.D.
Act. The Badarpur Thermal Power Station is a
vital installation and the Management of the NTPC
limited at this Station appears to be too apprehen-
sive of all consequences of the Unionism in these
cadres and making all out efforts to see that they
remain to be classified as Supervisory/Managerial
and thus unable to use usual union weapons against
the Management. It was nothing but colourable
exercise of power. These members do not perform
any managerial functions nor were they in any
manner associated with the managerial activities.
They do not supervise the work of anyone nor do
they manage the work done by others. They were
themselves doing their job and quite often on direc-
tion from their superiors. The details of the duties
of these different categories of employees are as
follows :

"(A) CONTROLLERS : The controllers are
posted on the Boiler Desk, Turbine Desk,
Generator Desk and Milling Desk. These
locations are operated by the controllers.
He is in fact operator of Desk, who con-
trol the machine, as he sits on a chair in
front of the Desk and Controls the para-
meters of the machine with his own hands
and write down his observation hourly.
There is no subordinate under him for
example, the functions of Boiler Desk
operator is as follows :

His main job is to maintain the boiler
pressure and temperature at about 90 Kg/
CM² and 540°C on full load. As and
when it is more or less than he himself
control and feed the more pulverised fuel
in the boiler or reduces the fuel in boiler.
Similarly there are other such location such
as Turbine Desk, Generator Desk, Milling
Desk and their functions are as follows.
It will be seen that from the operational
point of view none of these categories of
so called supervisor personnel, supervise

any body's work, rather they are themselves workers in as much as they are operating personally. They enjoy no freedom to move away from the Desk during shift nor they have any Managerial/Administrative/Financial powers vested in them.

There are other nomenclatures on the technical side such as Sr. Operator, Jr. Controller and Assistant Controllers also. They are actually working on the same locations where controllers are working. These juniors and Assistant are rotating in shift with controllers and Sr. Operators and discharging same functions. Junior Controllers and Assistant Controllers are also posted on less important locations such as turbine floor, feed-pumps, condensate pumps, boiler floor and they are operating the machine with their own hands and doing all sort of manual work required for running of the machines. It is also pertinent to note that these locations are also managed by operator Grade I, II and III, who are discharging same functions and they are termed as "workmen". The Management however, drawn a technical line in these categories by calling some as supervisor and others as worker only for the differences that those who possess diploma in engineering are declared supervisors and who do not possess diploma are labelled as workers. There are about 250 such workers some are called Supervisors while others are not.

- (B) A similar position exists in the Account Department. The Sr. Accountant who is termed as a Supervisor prepares the salary bills, L.T.C. Bills, Advance Bills and Medical Bills etc. He also prepares balance sheet. In practice the work of the Sr. Accountant is supervised by the Accounts Officer. The Sr. Accountant does not supervise any body's work nor can he allocate work in Accountants of grade I, II and III. In practice the Accountants Grade I, II and III are also doing the same type of work as Sr. Accountant and all of them are allocated work by the Accounts Officer or somebody higher than Accounts Officer. The bills are also not passed by the Sr. Accountant but are only prepared and only at times bills prepared by another to point out mistakes, if any and such checked may be done by a man of the same status or a little superior designated as Senior Accountant. Speaking in brief the Senior Accountant as well as the accountants grade I, II and III are accounts clerk tagged with their respective table during office working hours without having any financial or administrative powers or even supervisory powers.

- (C) JUNIOR CHEMISTS : He does chemical analysis of water and gases in the laboratory by application of his own hand. It is true that he is assisted by the laboratory analyst

but these analyst are deployed by the Sr. Chemist, who also decide their placement with any particular junior chemist. The junior chemist cannot decide their work place. The junior chemists are usually analysing feed water, boiler water, steam sample, Hydrogen sample, flue gas sample and pulverised coal etc. The movement of junior chemists are fully controlled by the shift charge engineer or Dy. Manager (Chemist) etc.

- (D) There are some supervisors grade I, II and III in the personnel department and their main job is to assist Personnel Officer, Dy. Manager (Personnel) and Chief Personnel Manager. In practice these supervisors are maintaining files and do nothing and a little bit of routine drafting. They are working at the direction of their officers. There is no subordinate to them nor they can allocate work to any body. They are not exercising any Managerial or Administrative powers but simply tagged to their tables."

The pay scales for grade III was Rs. 750 basic, grade II Rs. 800 per month basic and Grade I Rs. 880 per month basic and senior supervisors Rs. 950 and the maximum DA of about Rs. 490 with Rs. 50 as C.C.A. maximum was added to this basic pay. They were all drawing less than Rs. 1600 PM in the beginning of the scale. Some of them do cross emoluments more than Rs. 1600 PM but salary alone was not of significance in determining the Managerial and Supervisory nature of work. The supervision implies supervision of some subordinate's work, control of Administration etc., placement of subordinate and the like. These categories of the staff were covered under the definition of workmen who were rotating in shifts and were required to do double duty compulsorily. Even Accountants were also detained beyond their normal duty hours of work compulsorily as and when required by the Management after the end of General Shift and were also required to work on holidays for emergency accounts work. They were entitled for overtime when detained compulsorily for double duty or beyond their normal duty hours at the rate twice the rate of their ordinary wages as per provisions of Indian Factories Act. They were denied overtime payment only on the ground that they were supervisory cadre and as such not entitled to overtime.

3. The second dispute for the merger of F1 and E2 Grade, F1 was mainly meant for departmental employees i.e. employees working as Controller, Accountant Gr. I Supervisor Gr. I were eligible for the grade of E1 after having completed three years in their grade. Employees so promoted were eligible for the further promotion in the grade E II after having completed three years in AI grade. The employees promoted in the grade of E I were mainly Diploma holders in Engineering or Technical, sidewise on Accounts and Personnel sides they were graduate and not graduate in their respective discipline. The post in E II were duly filled in through direct recruits among Degree Holders in Engineering and graduate

in other disciplines. The duties assigned to the employees of grade E1 and E2 were same and they were discharging the same functions and responsibilities. The department employees after considerable experience of about 10 years or more being promoted to the lower grade of E1 while freshers having no experience were inducted to the higher grade E2 grade. Even the qualification, are same in cases of finance and personnel candidates. This was a gross discrimination. The workmen have demanded that the post of E1 should be abolished and employee should be promoted to the grade E II from the date of their promotion due for E1 grade. The discriminating two scales should be merged into one and both the grade should carry equal further chances of promotions.

4. In reply to this statement of claim the management filed written statement in which some preliminary objections to the maintainability of the references were also taken up. It was alleged that the National Thermal Power Corporation (hereinafter referred to as NTPC) was a company incorporated under the companies Act with its registered as well as Head Office at New Delhi which were commonly known as its corporate office. It was a Government of India Enterprise.

5. National Thermal Power Corporation was engaged in the business of Generation and transmission of Thermal Power through construction, erection, operation and maintenance of super thermal power projects and associated transmission lines net-work spread over in a number of States and the Union Territory of Delhi. Every such project is treated as an establishment of NTPC.

6. The generation and transmission of energy, particularly Super Thermal Power Stations, is a capital intensive industry and the Corporation used highly sophisticated technology which involves the employment of skilled manpower. The concept of Super Thermal Power Station consisting 500 MW units for power generation and high voltage transmission of 400 KVs and high voltage direct current transmissions are introduced in a big way on the national power scene by NTPC. NTPC is administered on scientific lines laying down the structure of the organisation, relationship between sub-systems and nexus between technology and quality and quantity of manpower, channels of authority and communications and functional and status based stratification of jobs. Badarpur Thermal Power Station was set up on 4-5-74 by Department of Power, Ministry of Energy, Government of India.

7. By an agreement dated 12-4-78 between NTPC and Government of India, the Management of Badarpur Thermal Power Station was given to NTPC for a period of 10 years w.e.f. 1-4-78. All the persons who were on deputation and/or on the muster rolls of Badarpur Thermal Power Station were transferred to NTPC. Later on some of the deputationists reverted back to their parent department while some were absorbed in NTPC. All the staff working at Badarpur Thermal Power Station are employees of the NTPC now. In fact the Badarpur Thermal Power Station is being run managed and administered by NTPC even though the said Thermal Power Station belongs to the Government of India. This Power Station is treated as one of the Tribunals/Establishment of NTPC.

8. The Badarpur Thermal Power Engineers Association is one of the Trade Unions which is functioning at Badarpur Thermal Power Station. The said Association submitted its charter of demands vide its letter dated 30-7-83 and also by the said letter served a notice on the management of pen down strike to be followed by the General strike. The Badarpur Thermal Power Station has a public utility service, the conciliation officer, as required by law, initiated conciliation proceedings. After various hearings the memorandum of understanding was reached between the parties and the association accepted the representation of pay scales and allowances for the supervisory categories i.e. Sr. Operator, Jr. Controller, Supervisors Assistant Controller, Controller, Supervisors Gr. I, II and III, Sr. Supervisors, Accountant Gr. I, II and III Senior Account, Junior Chemist etc. in accordance with the corporate personnel circular No. 117/83 dated 19/26 September, 1983 excluding clause 72 of the said circular thereby giving substantial benefits to the said category of employees.

9. The said memorandum further recorded that the Association had proposed to the management that the supervisory employees who were detained for work beyond their normal duty hours should be given extra wages/salary on the basis of single rate in lieu of compensatory off. The memorandum recorded the said demand as under :

"Overtime allowance : The Association proposed that the supervisory employees who were detained for working beyond their normal duty hours should be given extra wages/salary on the basis of single rate in lieu of the compensatory this suggestion and give its decision within a period of 3 months."

In pursuance of the said memorandum, of understanding the Management issued its circular No. BTPSO 4-85 dated 12-7-85 which dealt with the demand for payment beyond normal hours of work to the supervisory cadre. In view of the understanding thus arrived between the parties and in pursuance of which understanding the management already had issued the circular and agreed to make payment of overtime stood settled between the parties. The dispute, therefore, if any ceased to exist.

10. The Association without any reason or cause vide letter dated 16-6-84 again served a strike notice and raised demand including for overtime as well as abolition of E1 Grade of the Executive category. The Conciliation proceedings ended in failure.

11. Badarpur Karamchari Sanyukt Morcha is a Conglomeration of 5 unions including the Association functioning at Badarpur Thermal Power Station. It submitted a charter of demands dated. 12-10-84 including the demand for payment of overtime. The conciliation proceedings ended in failure in this case also.

12. All India NTPC Supervisory Staff Federation of which the Association a Constituent member in the meantime filed two writ petitions No. 1101/84 and 1102/84 in the High Court of Delhi. In

the said Writ petition the difference in qualifications prescribed for Grade E1 & E2 was challenged. The writ petitions in fact pertained to the demand of the Association for abolition of E1 Grade and merger of E1 and E2 grades. The writ petitions were dismissed by the Hon'ble High Court vide Order dated 18-10-84. Special leave petition was filed in the Hon'ble Supreme Court which was also dismissed on 4-12-85. Keeping in view the above salient features the management took some preliminary objections that this Tribunal had no jurisdiction to entertain this case as the Appropriate Government in this case was State Government and not Central Government which had made this reference. The reference order was bad and liable to be rejected and quashed. In view of the memorandum of understanding and the management circular referred earlier the dispute regarding the overtime stood settled between the parties and since no dispute existed so this reference was bad and liable to be quashed. The dispute between the parties never arose to the effect that these persons were supervisory employees and since no such dispute ever arose so terms of reference was bad in law and liable to be rejected. If the Supervisory staff were workers within meaning of a Worker as defined in the Factories Act, they were entitled to the benefits of the provisions in the Factories Act and no reference under section 10(i)(e) of the Act should be made. Factories Act was complete code and, therefore no other court or Tribunal had got jurisdiction to adjudicate upon and to enforce the provisions of the Factories Act. The merger of E1 and E2 grade again form the terms and conditions of the employment of workman and thus this dispute does not fall within the definition of Industrial Dispute Act as defined in Section 2K of the Act. This question has also been decided by the Hon'ble High Court in two Writ petitions filed by the Association and the Association was thus debarred from raising the same. There has been no espousal much less proper espousal in respect of the demands referred and foregoing subject matter of the reference order. The categories mentioned in terms of reference I are the Supervisory Categories drawing wages exceeding Rs 1600/- PM and the Tribunal has thus no jurisdiction to entertain reference in respect of those categories. The Association had agreed and accepted the above categories as supervisory categories and thus having accepted it was not open to the Association to contend to the contrary. The Government having once declined to make reference with demand could not have made such reference again.

13. On merits, it was alleged that the allegations made in the statement of claim were incorrect and the Association should be put to strict proof. Allegations were vague and lack material particulars. The categories of staff were not workmen as defined in Section 2(s) of the I.D. Act and were not entitled to the payment of any overtime. The generation of Power and distribution thereof is a public utility service as per Industrial Disputes Act, 1947 which is a continuous process and work is to be carried on round the clock. The working of the

employees has been divided into three shifts i.e. A, B and C with the following timings :

'A' Shift—from 9 PM to 8 AM.

'B' Shift—from 8 AM to 3 PM

'C' Shift—from 3 PM to 9 AM.

Besides these there is a general shift from 8.30 AM to 5 PM while the employees working in the General shift get their weekly off on one day for every 6 days of work others in the rotational shifts get off for every 3 days of work. The concept of work week consisting of 6 working days as envisaged, in the Factories Act does not hold good for employees deployed/rostered in rotational shifts. The Management has not indulged in any unfair labour practice and is not providing protection and benefits under the provisions of various industrial laws. The allegations made in the statement of claim were incorrect. This category of staff was supervisory category and could not be considered as workmen.

14. The two categories i.e., E1 and E2 Grade could not be merged together because different qualifications and requirement of work were expected from those recruited directly and recruitment was made on the basis of qualifications only. E. II grade was higher than E1 grade and, therefore, by asking for abolition of E1 Grade or its merger with E2 grade, the Association was asking for promotion which was the function of the Management. The fixation of the work force both qualitative and quantitative was a Management function and not the jurisdiction of this Tribunal. On the basis of the above averments in the written statement it was alleged that claim of the workman was not justified and the same deserves to be rejected. The Management examined MW1 Shri M. Jha, Superintendent, MW2 Shri Brij Kishore, Superintendent, MW3 Sh. J. P. Bhasker, Manager, MW4 Shri Mr. M. Harbhajan Singh Bhattal, Manager, MW5 Shri H. S. Misra, Sr. Manager, MW6 Shri Brama Shanker Superintendent Operations and workmen examined WW1 Shri Om Prakash Gupta workman, WW2 Shri Jai Khushrani, Senior Supervisor, Personnel, WW3 Shri N. K. Chaudhary, workman. I have heard representative for parties and have gone through the record.

15. It has been urged by the representative for the Management that the reference has not been made by Appropriate Government. N.T.P.C. is a Company incorporated under the Companies Act and is a private limited company as defined under section 3(1) (III) of the Companies Act, 1956 as per para i(I) of the rejoinder. N.T.P.C. as such is not a Government Department. The employees working in Badarpur Thermal Power Station are employees of the NTPC. In order to decide as to who is the Appropriate Government one had to take into consideration the definition of the Industrial Disputes Act as stated in para 2(k) of the said Act as well as the definition of the Employer as given in section 2(g) of the Act, Para 2(k) of the I.D. Act defines an industrial dispute as "any dispute or difference between employers and employees or between employers and workmen or between workmen and workmen....". The present dispute is not a dispute between Employer and Employees

and there is no dispute between N.T.P.C. and Central Government. This is neither a dispute between the workmen and workmen and the Union can only rely and say that this is a dispute between employer and workmen. The workmen employed in B.T.P.S. are employees of the NTPC and not of the Central Government. It is thus a dispute between NTPC and its workmen.

16 The Appropriate Government has been defined under Section 2(a) of the Industrial Disputes Act. The Union can only rely and contend that BTPS is 'Industry' carried on by or under the Authority of the Central Government. The contention of the Union is that BTPS is owned by the Central Government. Merely because the ownership of the BTPS belongs to or vests in Central Government. It does not mean that any dispute arising between NTPC and its workmen cannot be said to be employees of the Central Government or that the Central Government would become appropriate Government in their case. Central Government should be Appropriate Government only if it was carrying on an Industry either itself or under its authority the present reference has been made by the Central Government which is as such not the appropriate Government in this case. This Tribunal has thus, no jurisdiction to go beyond the order of reference as the Tribunal derives its jurisdiction from the reference order and it has power to decide the dispute only as referred in the order of reference.

17. The next point referred to by the Representative for the management is that NTPC is an independent juristic person and is not a government department. Even if it is a Government Company it does not cease to be a company under the Companies Act and the ownership of the Management of the BTPS is irrelevant under Section 25FF of the Industrial Disputes Act, 1947, even the Management of an undertaking can be transferred. There is a distinction between ownership of an undertaking and the management of an undertaking. In the case of Heavy Engineering Union Versus State of Bihar 1968 1 LLJ Page 241 the Supreme Court has dealt with the issue of what is the appropriate government and stated that despite of the fact that the company may be a government company the power of reference is vested in the State Government and not the Central Government.

18. Even if the workmen contend themselves to be employees of the Government of India they cannot raise an Industrial Dispute with the employers in relation to the Management of General Manager BTPS namely NTPC. The charter of demand was submitted by them to the NTPC so was the memo of understanding reached with NTPC which clearly shows that the Association and its members had admitted that they were employees of the NTPC. This Tribunal has no jurisdiction to try this reference because the Central Government is not the Appropriate Government for making this reference.

19. This Tribunal has been constituted by the Government of India has not been appointed by the Delhi Administration and the reference under Section 10(1)(d) has to be by the Appropriate Government and the Appropriate Government in this case

was Delhi Administration/Lt. Governor of Delhi. In that case the reference should be made to the State Tribunal and not to the Central Government Tribunal.

20. The next preliminary objection by the management was that the memorandum of understanding was reached which was Ex. W5/14 No. BTPS-04-85 dated 12-7-1985 which covered the issue of payment of overtime. The dispute regarding overtime thus stood settled. Since no dispute existed so no reference could be made. In that M.O.U. which pertained to several demands including revision of Pay scales and other allowances, overtime, transfer and fixation of quota for promotion for workmen and employees in supervisory categories, issuance of terricot uniforms, safety shoes, overtime allowance etc. The said demands of the Union were satisfied and with regard to overtime the parties had agreed to as follows :

"Overtime allowance—

The association proposed that supervisory employees who are detailed for working beyond their normal duty hours should be given extra wage/salary on the basis of single rate in lieu of compensatory off. The management agrees to consider this suggestion and give its decision within a period of 3 months."

21. The Management gave its decision and issued circular F.1. MW5/8 whereby they agreed to pay overtime at single rate. Prior to signing of this MOU, the supervisory personnel who used to work in rotational duties and worked beyond their duty hours used to get a day in lieu of such work. Besides that, they used to get free dinner/break fast. They were also being paid an allowance equivalent to 10 per cent of their pay subject to a maximum of Rs. 50 p.m. as mentioned in at page 28 of written statement and not controverted by the union. In the interest of industrial peace and harmony, the said MOU was arrived at between the parties though it was not registered as a settlement under the I.D. Act.

22. According to Factories Act the payment is required to be made at double the rate. Though according to MOU Union demands was regarding payment of overtime at single rate. A reference on this ground again was bad.

23. It has been alleged by the representative for the management that the said term of reference has been worded, as if the categories mentioned therein are deemed to be the workmen under the Industrial Disputes Act, and would automatically be entitled to overtime under the Factories Act. The said assumption on which the said term of reference has been framed, is absolutely wrong. Payment of overtime under the Factories Act is governed by the provisions of the Factories Act and the rules framed thereunder. The Factories Act covered workers and not the workmen. Section 2(L) of the Factories Act defines 'worker' as under :—

"Worker' means a person employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for

remuneration or not) in any manufacturing process or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process (but does not include any member of the armed forces of the Union.)”

24. A perusal of this definition would show that the employee/worker is required to be working in any manufacturing process or in cleaning any part of the machinery or premises or in any other kind of work incidental to, or connected with the manufacturing process. An employee is thus required to be working in a place of manufacture.

25. The Union has failed to prove that the categories of employees mentioned in the term of reference No. 1 are all employed in the manufacturing process in the factory premises. In the absence of any such evidence, it is submitted that they have thus failed to prove that these employees would be the workers within the meaning of the Factories Act and/or would be entitled to overtime as per the provisions of the Factories Act.

26. I have heard the representative for the parties and have gone through the record of this case in details. The objection of the management regarding the maintainability of the reference and the competence of this Tribunal to adjudicate upon this dispute has no legs to stand upon. Central Government has made this reference to this Court and the said Government is the Appropriate Government. The Badarpur Thermal Power Station has been established by and under the Authority of the Central Government in the year 1973 and the managing control of Badarpur Thermal Power Station transferred to National Thermal Power Corporation for a period of 10 years on the basis of bilateral agreement effective from 1-4-1978 which has been extended for a further period of three years. National Thermal Power Corporation is the Agent of Central Government and it cannot be said in the present case that Central Government is not Appropriate Government in the case. The Government is exercising its authority on the affairs of the Badarpur Thermal Power Station as is evident from the Office Memorandum dt. 11-12-1984 Ex. WW1/31 and dated 17-12-1984 Ex. WW1/32. The Badarpur Thermal Power Station still functioning as an Establishment by and under the Authority of the Central Government. The National Thermal Power Corporation has got only qualified power to manage the Administrative control over B.T.P.S. and for the same the Managing Fees has been fixed by the Central Government to a maximum of Rs. 5 lacs per annum. The balance sheet of Badarpur Thermal Power Station is separately prepared to that of the N.T.P.C. for its own. The balance sheet of NTPC does not contain the affairs of Badarpur Thermal Power Station though it contains the affairs of other projects which are continuing under the Direct Control of N.T.P.C. The Central Government, in my opinion, therefore, is the Appropriate Government for making this reference for adjudication to this court.

27. As regards the other dispute made in the reference pertaining to the first part as to whether the demand of the General Secretary Badarpur Power Engineers Association that the Sr. Operator, Junior Controller etc. should be treated as workmen by the Management and should be consequently paid overtime in terms of provisions of Factory Act, 1948 by the Management detailed arguments by both the representative for the parties have been addressed.

28. The representative for the management has urged that the category of employees stated in this reference were not workmen as defined in the Act. He has urged that a worker under the Factories Act has been separately defined than a workman in section 2(s) of the Industrial Disputes Act. He states that the Industrial Tribunal could not give its opinion regarding the definition of the worker under the Factories Act because if a person goes to apply for any leave under the Factories Act he will have to prove his case falling under the said Act and this court has been constituted under the Industrial Disputes Act and has to only deal with the definition of the workman has given in the Industrial Disputes Act. The generation of power and distribution thereof was public utility service as per I. D. Act which was a continuous process and work is to be carried on round the clock. There were separate shifts offices for the working and running of the plant and the concept of work week consisting of 6 working days as envisages in the Factories Act does not hold good for employees deployed/rostered in rotational shifts. It was obligatory for the Union to prove each and every person holding that designation or working within the factory premises and/or involved in the manufacturing process or in cleaning of factory or any work which was incidental to or connected with the manufacturing process. Merely because some evidence has been led with regarding to the working of the Controllers they could not be termed as workmen. The persons entitled to overtime allowance are to be defined by the State Government under section 64 of the Factories Act as well as rules framed thereunder. Section 64 of the Factories Act empowers the State Government to define persons who hold position of supervision or management or employed in a confidential position in a factory. Such persons could not be entitled to any extra payment of overtime under the provisions of section 64. Delhi Administration has made certain rules and under rule 81-82 of Delhi Administration persons holding position of supervision or management not require to perform any manual labour could be treated as supervisory staff and not entitled to any overtime allowance. Persons holding confidential positions were also not entitled to any such overtime allowance. It has been urged that the workmen have failed to lead any evidence to show that they were doing any manual labour. According to Mr. O. P. Gupta Controllers look after and manage the function of the plant their control panels which cannot be said to be of manual nature.

29. The Head Accountants, Attendants, Head Cashiers and Cashiers as well as Office Superintendent or Head Clerks were held to be the persons holding confidential positions. These categories were covered under rule 81 or under rule 82. Therefore, they could not be held entitled to overtime as per section 64 of the Factories Act. They were as such not entitled

to any payment of double the rate as claimed by them.

30. The representative for the management has further urged that though not admitting and even for the sake of arguments if the workmen as defined in I. D. Act automatically become worker under the Factories Act then his entitlement of overtime is governed by provisions of the Factories Act and would not automatically be entitled to the allowance.

31. On careful perusal of the points urged by the representative for the parties, I am of the definite opinion that the members of the union on whose behalf this case has been espoused are all workmen as defined in section 2(s) of the I. D. Act. It has been established that they are all covered under the definition of section 2(s) and the mere fact that they are operating machine with control panel does not in any way change the nature of their duties. Operating the panels with control panels is also a manual work and as such cannot make the persons working as Supervisor.

32. The categories of employees referred in terms of reference and from the nature of their duties performed by them it was crystal clear that they were performing the duties of a workman and they were workmen within the meaning of section 2(s) of the I. D. Act. It has been proved that the work performed by these employees are by way of taking recourse to mutual, operational technical as well as clerical duties therefore, the predominant nature of the duties performed by these workmen categorically brings those workmen within the definition of a workman. Shri O. P. Gupta WW1 appeared on behalf of the workmen and stated that all these employees were performing their duties by way of mutual operational technical as well as clerical duties. He also proved documents Ex. WW 1/1 to Ex. WW 1/36. Shri O. P. Gupta stated that the duties of the Senior Operator are to operate Milling Desk and Boiler Desk and further justified that the details of his duties given in the affidavit in paragraph 26 was entirely correct. He denied the suggestion of the Management that these Senior Operators were supervising the work of any other persons or anyone else was working under them. They were not exercising or controlling the power on other operators. In Ex. WW 1/15 the management admitted that the Controllers falling within the category of Operators and Operators were within the meaning of workman and there was no dispute regarding the status of Operator as workman.

33. In Ex. WW 1/17 even the Senior Controllers, Junior Controllers of categories Senior Operator have been included within the channel of promotions which are prescribed for the workmen category. In photograph Ex. WW 1/6 Shri Om Parkash has been shown performing his duties manually on Desk/Control Board. Shri Brahm Shankar admits that Junior Controller to Senior Controller are working on Control Board on which WW1 have been shown working in Ex. WW 1/6. The post of Senior Operator and Jr. Controller one and the same post and belong to the same category. In documents MW 6/W1 and MW 6/W2 and MW 6/W3 issued by the Management Controller have been referred as Desk Operator by them. They

were opposed to fill log sheet in different log in prescribed samples copy of which was Ex. MW 6/W3. From the perusal of the log sheet it could be seen that Senior Operator/Jr. Controller, Controller Assistant Controller were required to operate machine within the prescribed limits given on the log sheets. They were also supposed to have hourly readings. Instructions have been issued to them to carry out operational work of machine and equipment. The Representative have further urged that the Management has referred these employees performing duties either manually, operationally and technically in documents Ex. WW 1/19 Management itself admitted that Accountants were not holding confidential positions and they are doing original work manually and are not holding any Supervisory position. It has been further admitted by the Management that the Accountants are eligible for overtime allowance in terms of section 59 of Factories Act. All these employees were thus performing their duties manually operationally technically as well as clerically. The Representative has referred to AIR 1985 Supreme Court 985 where the Hon'ble Supreme Court held that the nature of duties of the workman shall be the decisive factor. The primary and the basic duties constituted the criteria for determining whether a particular employee is a workman or not. Chemists were held to be workmen in AIR 1971 Supreme Court 922.

34. In AIR 1984 Supreme Court 914 the Security Inspector under whom several watchmen were deputed was 'workman' within the meaning of section 2(s) of the Industrial Disputes Act because of the duties performed by the Security Inspector. In the instant case the Management could not bring any conclusive piece of evidence even to suggest that these employees are at any point of time worked and/or associated in Supervisory capacity of duties and whether they were made entitled to take disciplinary action against any employee or control on any employee. Controllers and Operators do not have any financial as well as managerial powers to discharge like sanctioning of leave, the placement chart of Controllers, Asstt. Controllers, Sr. Operator/Jr. Controllers and Operators Grade-I, II and III exhibited as WW1/9, WW1/10, WW1/11 and WW1/12 show that the Controllers and Assistant Controllers etc. performing the same job as being performed by Operator Gr. I, II and III and it was also admitted by MW6 that Controllers were working side by side of operators on same locations. The Supervisory and Managerial Powers are exercised by the Executives and the present category of employees do not fall in that category. All these employees, therefore, were workmen but no evidence has been led by the management to prove that they are not workmen or belong to any supervisory category.

35. For the reasons stated in the statement of claim and the arguments addressed by the representative for the workman with which I agree, I am of the opinion that the Senior operator/Junior Controller, Assistant Controller Accountants and other persons stated in the first part of the reference should be treated as workmen by the management and as such were entitled to overtime according to provisions of the Factories Act, 1948. Of course they have to fulfil requirements of the said Act before they could become eligible for payment. They were also entitled to all other statutory

benefits under the Factories Act as other workmen were entitled to. I, therefore, while concluding this part of the reference hold that these persons were workmen and entitled to all statutory benefits from the date of reference.

Reference Part II

36. It has been urged by the management regarding the second part of the reference that it was fully justified in keeping two separate channels with chances of promotion for both categories of EI and EII grades, in the Badarpur Thermal Power Station. One category belongs to the Engineers who are promoted and the other on the basis of direct recruitment. There was no discrimination in keeping these two channels because the qualification for direct recruit were different and those for promotees were different. Detailed written arguments has been filed by the management on this.

37. The workman representative on the other hand have urged that EI grade was meant for departmental candidates and EII for direct recruits. The duties of both EI and EII grade are the same and they perform the same responsibilities. Candidates having experience of 10 years or more were being given lower grade of EI while the fresh recruits having no experience were being given EII Grade. When the nature of job of EI and EII are the same there was no justification in keeping the departmental employees below the direct recruits. It amounts to stagnation for the departmental candidates. It has further been urged that the reference of the writ petition by the management was not relevant because the said writ petitions were never intended to get a writ on the point of violation of grade I or its merger with EII.

38. The representative for the workman in their arguments have urged that their demand was fully justified. They have given detailed arguments in writing. The E-II category candidates were graduate engineers who were employed as trainees and after the period of training they were taken into E-II grade. Graduate Engineers were not available for EI category because of their higher qualification. The matter was agitated in the Hon'ble High Court vide writ petition No. 1101 of 1984 in which it was held by the Division Bench of the Hon'ble High Court that the criteria is uniformly applicable to all the employees of a Company. There is no discrimination. There is thus no merit in the writ petition and the same is accordingly dismissed. This order was passed on 18-10-84. Thereafter the Union went in for Special Leave Petition to the Hon'ble Supreme Court which too was dismissed on 4-12-85. Since the matter has already been decided by the Hon'ble High Court and for all those reasons given by the management in its written arguments I am of the view that since here is no discrimination established on record in maintaining two different categories of promotions there seems to be nothing wrong in this system being adopted by the management. The reference is answered accordingly. Parties shall bear their own costs.

GANPATI SHARMA, Presiding Officer

June, 23, 1992.

नई दिल्ली, 4 अगस्त, 1992

का. घा. 2237.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचना में, केन्द्रीय सरकार द्वारा तैयार किया गया प्रोडक्ट्स लिमिटेड, त्रिवेन्द्रम के प्रबन्धन के संबंध में निम्नलिखित शर्तों के बीच, अनुसूचना में निम्नलिखित औद्योगिक विवाद में औद्योगिक अधिकरण, मद्रास के पंचदश दिनों के अन्दर फैसला करेगा, जो केन्द्रीय सरकार की 31-7-92 की प्रतीति द्वारा था।

[संख्या एम-29011/41/86-डी-III (ब)]

का. एम. डेविड, डेस्क ऑफिसर

New Delhi, the 4th August, 1992

S.O. 2237.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Madras as shown in the Industrial Dispute between the employers in relation to the management of Travancore Titanium Products Ltd. Trivandrum and their workmen which was received by the Central Government on 31-7-1992.

[No. L-29011/41/86-D-III(B)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU, MADRAS

Thursday, the 30th day of April, 1992

PRESENT:

THIRU M. GOPALASWAMY, B.Sc., B.L., Industrial Tribunal.

INDUSTRIAL DISPUTE NO. 24 OF 1989

(In the matter of the dispute for adjudication under section 10(1)(d) of the Industrial Disputes Act, 1947 between the workmen and the management of Travancore Titanium Products Ltd., Kochuveli, Trivandrum).

BETWEEN

The workmen represented by

1. The General Secretary, Titanium General Labourers Union, C/o T. T. P. Ltd., Trivandrum-695021.
2. The General Secretary, Titanium Workers' Union, C/o T. T. P. Ltd., Trivandrum-695021.
3. The General Secretary, Titanium Products Thozhilali Union, C/o T. T. P. Ltd., Trivandrum-695021.
4. The General Secretary, Titanium Employees' Association C/o T.T.P. Ltd. Trivandrum-695021.

AND

The Managing Director, Travancore Titanium Products Ltd., Regd. Office, Kochuveli, Trivandrum-695021.

REFERENCE :

Order No. L. 29011/41/86-D.III(B), dt. 1-3-1989,
Ministry of Labour, Government of India,
New Delhi.

This dispute coming on for final hearing on Wednesday, the 11th day of March, 1992 upon perusing the reference, claim and counter statements and all other material papers on record and upon hearing the arguments of Tvl. V. Sukumaran Nair, B. Balakrishna Menon and B. Vijayalakshmi Menon, Advocates appearing for the workmen and of Tvl. B. S. Krishnan & Associates, Advocates appearing for the management, and this dispute having stood over till this day for consideration, this Tribunal made the following :

AWARD

This dispute between the workmen and the management of Travancore Titanium Products Ltd., Kochuvel, Trivandrum arises out of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in its Order No. L. 29011/41/86-D.III(B) dt. 1-3-1989 of the Ministry of Labour, for adjudication of the following issues :

"Whether the demand of the Titanium General Labourers Union, Titanium Workers' Union, Titanium Employees' Association and Titanium Products. Thozhilali Union for rectification of anomalies in the salary of the following 18 employees is justified? If so, what relief are the workmen concerned entitled to?"

Sl No.	Name of workers	Designation
1.	Gopinathan Achari V.	Carpenter
2.	Bangan Azari P.	
3.	E. Ayyappan	"
4.	Pecthambaran S.	"
5.	Kunhikannan D.	"
6.	James V. Velakulam	Electrician
7.	Karumakaran Nair K.	"
8.	Krishnan Nair M.	"
9.	Bebastian Joseph	"
10.	Ravindran Nair S.	"
11.	Engine L. Perera	"
12.	Abdul Sathat S.	"
13.	Stephenson H.	"
14.	Balan T.	"
15.	Paramashwaran Nair G.	"
16.	Surendranathan R.	"
17.	Girisan K.	"
18.	Abdul Rahiman A.	"

2. The allegation in the claim statement are as follows : The Petitioners-3 Unions are sponsoring the case of 17 workmen who are technical hands such as Carpenters, Electricians, Fitters etc., for obtaining parity of pay with that of drivers all in the pay scale of Rs. 220—650. These technical hands are senior

to the drivers numbering four. Thiru A. P. Govindan was appointed on 13-4-1977 as a driver in the same pay scale but with a higher starting pay of Rs. 360 which was higher than the pay drawn by other senior drivers and also other senior technicians like the petitioners.

3. This act of unfair labour management by giving preferential treatment to Thiru A. P. Govindan led all the other workmen to agitate for hiking their pay to that of Thiru A. P. Govindan. The Respondent-Management instead of increasing the pay of the other workmen in the same engineering department reduced the pay of Thiru A. P. Govindan to the minimum of Rs. 220 in the time scale. This reduction provoked Thiru A. Govindan to approach the Conciliation Officer and then the Industrial Tribunal, Quilon for restoring his original higher starting pay of Rs. 360. The Quilon Industrial Tribunal passed an award for raising A. P. Govindan's pay to Rs. 360 as originally fixed by the Respondent. Three drivers who were senior to Thiru A. P. Govindan; having already clamoured for raising their pay to that of the junior Thiru A.P. Govindan, had their dispute resolved in I.D. No. 77 of 1984 on the file of the Industrial Tribunal, Madras, under whose award, the senior drivers' pay was raised to be on par with the pay of Thiru A. P. Govindan with effect from A. P. Govindan's initial appointment dated 13-4-1977.

4. The technical workers seeking remedy in this I. D. made individual representations to the Respondent for increasing the pay of these 17 workers to the pay of their junior A. P. Govindan and also three other drivers. Their representation, were rejected by the Respondent by orders dated 1-1-1986 and 13-5-86. Then the question was raised before the Central Labour Commissioner, Trivandrum whose conciliation proceedings failed. Then the Union Government refused to make a reference to the Industrial Tribunal after perusing the failure report. Thereafter the Petitioners filed a writ petition before the High Court of Kerala which directed the Central Government to refer this dispute to the Industrial Tribunal. Seventeen workers and the four drivers including Thiru A. P. Govindan are working in the same engineering department having the same time scale of pay and also similar duties. They are governed by Subordinate Service Rules framed by the Respondent. Substantially there is no difference between the work done by the Seventeen technical workers and the four drivers. It is not fair for the respondent to deny giving parity of pay to the seventeen workers who are seniors with the pay of the four drivers including Thiru A. P. Govindan who are all juniors. This anomaly of seniors drawing lesser pay than juniors in the same engineering department has crept in as a result of the special treatment given to the driver Thiru A. P. Govindan and subsequent events. The stand of the Respondent that the seventeen technical workers belong to a different cadre as against drivers who belong to a different cadre is false and untenable. Hence it is prayed that an award may be passed for fixing the basic pay of these seventeen technical workers at Rs. 360/- on par with the pay of Thiru A. Govindan in the same scale of pay from 13-4-1977 and granting all consequential monetary benefits.

5. The Respondent-Management alleged in the counter as follows: The reference is not maintainable. The workmen whose claim is under adjudication have joined the service of the Respondent during 1974-75. The Respondent's organisation is divided into several departments, of which the engineering department is the base. The Subordinate Service Rules framed by the Respondent's provide for six different scales of pay and under each time scale of pay different categories of workmen are grouped. The seventeen workmen concerned in this dispute belong to different trades in the engineering department but belong to the same category. This category is one among 48 categories of workers spread over various departments, but having the same pay scale. Drivers' category is also placed on the same pay scale. The appointment of Thiru A. P. Govindan as driver on 13-4-1977 with a higher starting pay as Rs. 360 resulted in the filing of an industrial dispute in the Madras Tribunal by the other drivers. Due to equitable considerations, the Madras Tribunal passed an award dated 24-1-1985 for raising the pay of other drivers on par with that of Thiru A. P. Govindan who was the juniormost among drivers.

6. The seventeen workmen covered by this dispute drawing inspiration from the Madras Tribunal's award sent representations to the Respondent on 11-12-1985 claiming that they being seniors to the drivers, more particularly Thiru A. P. Govindan, their pay should be raised to the pay of the drivers. The claim of these seventeen workmen is not bonafide and not just. They belong to a trade or cadre which is different from that of drivers. The nature of duties and qualifications, the process of selection and promotion procedures and avenues for these seventeen workmen are different from those of the drivers. The procedure for rectification of pay anomaly given under the Subordinate Service Rules does not provide for maintaining parity between different trades or cadres. Since the seventeen technical workers are not placed equally with the drivers, they cannot be treated equally in fixing their pay. If the claim of these seventeen workmen is allowed, all the other workmen belonging to 48 categories and having the same time scale of pay will raise similar demands for parity of wages on the ground of seniority. The claim has no merit and is liable to be dismissed.

7. The Petitioners' contend in their rejoinder as follows: The pay anomaly had occasioned only due to the act of the Respondent by which the starting pay of Thiru A. P. Govindan was arbitrarily fixed on 13-4-1977. The contention that the seventeen workers making the claim for parity belong to one trade and that the drivers belong to another trade is without substance. These seventeen workmen and the drivers belong to the same engineering department have the same time-scale of pay and perform similar duties and hence they belong to the same cadre.

8. The point for determination is:

"Whether the demand of the Titanium General Labourers Union, Titanium Workers Union,

Titanium Employees Association and Titanium Products Thozhilali Union for rectification of anomalies in the salary of the 18 employees mentioned in the reference is justified? If so, what relief are the workmen concerned entitled to?"

9. For the workers, one of them Thiru Abdul Rahman who is a fitter working in the engineering department was examined as W.W. 1. The Respondent-Management examined its Manager (Personnel Administration) as M.W. 1. Exs. W-1 to W-24 and Exs. M-1 to M-8 were marked. It is common case that the seventeen workers interested in this dispute are technical workers having got I.T.I. Trade Certificates and they are working under the Respondent as Fitters, Electricians, etc. and that they are also seniors to the drivers including Thiru A. P. Govindan who came to be appointed only on 13-4-1977. It is admitted that the seventeen technical workers who are seniors as against A. P. Govindan and other drivers, besides several other categories of workmen belonging to different departments are placed on the same pay scale of Rs. 220—650 under Subordinate Service Rules coupled with the settlements made periodically. It is also not in controversy that out of the 48 categories of workers spread over various departments but having the common pay scale, seventeen claimants herein and the four drivers belong to engineering department while many other workers belong to different departments. Therefore the parity of pay claimed by these seventeen workmen is clearly linked to one and the same department of engineering. Thus department wise there is unity between the seventeen claimants who are admittedly seniors and the four drivers and in particular Thiru A. P. Govindan who is junior to the claimants. The cleavage or anomaly has arisen as a result of the Respondent's act of putting Thiru A. P. Govindan appointed on 13-4-1977 on a higher starting pay of Rs. 360 but in the same time scale of Rs. 220—650. Being in the same engineering department and being also seniors to the driver Thiru A. P. Govindan the seventeen claimants are seeking parity of pay on the ground that they belong to the same cadre in the engineering department with identical pay scale. In the Subordinate Service Rules Ex. W-24, effective from 1977, the word 'cadre' is not defined.

10. One Rajan Valath was working as a Tradesman (Machinist) and was senior to Sri Varghese working as Tradesman (Instrument) under the Respondent in the Engineering Department. Rajan Valath was promoted as a Chargehand on 23-2-1978 while Varghese, junior to Valath was promoted as Chargehand on 11-8-1978. The pay of Varghese on promotion was higher than that of Rajan Valath. To set right the anomaly Rajan Valath raised I. D. No. 15 of 1987 in the Quilon Industrial Tribunal through his Union. The Respondent contended that Rajan Valath belonged to one trade and Varghese belonged to another trade and hence they cannot be treated equally in the matter of pay. The Quilon Industrial Tribunal repelled the contention and passed the award Ex. W-15 on 12-12-1985 holding that the pay of Rajan Valath should be the same as that of Junior Varghese. In that award, we find that the Respondent-Management has raised the pay of Poulouse working in the

electrical section to that of his junior Thiru J. working in the mechanical wing. This award Ex. W-15 is sufficient proof of the validity of the claim that the pay of a senior workman should not remain below that of junior workmen even though the two workmen belonged to two different trade or wings but coming under one department. The argument of the Respondent that promotion avenues for the drivers are different from the promotion channels available to other Tradesmen like the claimants, in my view has no relevance to the consideration of parity of pay among holders of posts within the same department and placed on the same pay scale. It is only rudimentary justice that senior workmen should not suffer inequity of drawing lesser pay than junior workmen when all of them belong to the same department of engineering and are having common pay scale. The fact that the four juniors including Thiru A. P. Govindan are drivers and hence their trade or job is different from the trades of the seventeen claimants cannot be pressed as a wedge to divide and as a valid ground because the duties performed by them are almost alike and same as referred in the common pay scale of Rs. 220-650. The case of the seventeen workmen that they must be treated as equals of drivers and hence a junior driver cannot draw more pay than that of senior tradesmen is quite just and acceptable on the basis of equitable principles. There is nothing in the Subordinate Service Rules to support the Respondent's contention that drivers by virtue of their duties must be treated differently from the other tradesmen for the purpose of pay fixation. I therefore find that the seventeen tradesmen who are seniors to the driver Thiru A.P. Govindan should be given the same pay drawn by Thiru A. P. Govindan from 13-4-1977 and they must be given all consequential benefits accruing to them as a result of their pay being fixed at Rs. 360 per month with effect from 13-4-1977. This point is answered accordingly.

11. In the result, an award is passed directing the Respondent to fix the pay of seventeen claimants workmen as Rs. 360 p.m. with effect from 13-4-1977 and give these claimants all consequential benefits accruing to them as a result of their pay being fixed at Rs. 360 with effect from 13-4-1977. There will be no order as to costs.

Dated, this 30th day of April, 1992.

THIRU M. GOPALASWAMY, Industrial Tribunal

List of Witnesses & exhibition in I.D. 24/89

WITNESSES EXAMINED

For Workmen :

W.W. 1—Thiru A. Abdul Rahiman.

For Management :

M.W. 1—Thiru K. M. Saraschandran.

DOCUMENTS MARKED

For Workmen :

Ex. W-1—Statement showing name of 17 workers, their designation and service particulars (xerox copy).

W-2—Statement showing name of 3 workers, their designation and service particulars (xerox copy).

W-3|11-12-85—Letter from Thiru A. Abdul Rahman to the Management requesting to rectify the anomaly on the pay scale (xerox copy).

W-4|1-1-86—Reply by Management to Ex. W-3 (xerox copy).

W-5|8-4-86—Letter from Thiru A. Abdul Rahman to the Management regarding revision of pay scales (xerox copy).

W-6|13-5-86—Reply by management to Ex. W-5 (xerox copy).

W-7|23-12-81—Xerox copy of the order of the Labour Court, Quilon in claim Petition No. 22/80.

W-8|24-1-85—Xerox copy of the Award of the Industrial Tribunal Madras in I.D. No. 77/84.

W-9|27-6-86—Joint Representation submitted by the Petitioner—Union to the Management (xerox copy).

W-10—Letter from the Petitioner—Union to the Assistant Labour Commissioner (C) Ministry of Labour & Employment, Govt. of India, Trivandrum regarding the anomaly in the pay of some workers (xerox copy).

W-11|26-11-86—Conciliation Failure Report and Minutes of Conciliation proceedings dated 4-11-86.

W-12|6-10-87—Order No. L. 29011/41/86-D.II/II(B) of the Ministry of Labour, Govt. of India, regarding rectification of anomalies existing in the salary of certain employees (xerox copy).

W-13|24-10-88—Xerox copy of judgment of Kerala High Court in O.P. No. 1500/88C.

W-14|1-3-89—Order of reference for adjudication to this Tribunal (xerox copy)

W-15|22-12-89—Award of Industrial Tribunal, Quilon in I. D. No. 15/87 (xerox copy).

W-16|14-6-72—Memorandum of settlement between parties (xerox copy).

W-17|13-11-78—Order of Personnel Manager of the Management regarding rectification of the basic pay of Thiru A. C. Poulson (xerox copy).

W-18|21-1-83—Order of Personnel Manager of the Management regarding rectification of the basic pays of Thiru S. Benson (xerox copy).

W-19|3-12-85—Representation submitted by Thiru Rajan Vallath to the management (xerox copy).

W-20|26-3-86—Appeal preferred by Thiru Rajan Valath to the management regarding rectification of anomaly in his basic pay (xerox copy).

W-21|16-6-86—Representation submitted by the Titanium Workers Union to the management regarding rectification of the anomaly in the basic pay of Thiru Rajan Valath (Xerox copy).

W-22|3-3-86—Reply by the Management to Ex. W-19 (xerox copy).

W-23|16-4-86—Reply by the Management to Ex. W-20 (xerox copy).

W-24—Subordinate Service Rules of the Management effective from June 1977.

For Management :

Ex. M-1|30-9-85—Memorandum of settlement between workmen & Management (xerox copy).

M-2|14-6-76—Order of Managing Director regarding anomalies in basic pay of employees (xerox copy).

M-3|1-10-77—Order of Managing Director regarding anomalies in basic pay of employees (xerox copy).

M-4|12-10-77—Order of Managing Director regarding anomalies in basic pay of employees (xerox copy).

M-5|9-1-78—Order of Managing Director regarding anomalies in basic pay of employees (xerox copy).

M-6—Subordinate Service Rules of the Management effective from 1-5-1985.

M-7—Schedule in Part III of Subordinate Service Rules of Travancore Titanium Products Ltd., 1967, (xerox copy).

M-8—Subordinate Service Rules of Travancore Titanium Products, 1977—pages 11 to 14 (xerox copy).

नई दिल्ली, 4 अगस्त, 1992

का. घा. 2238—औद्योगिक विवाद अधिनियम, 1947 (1947 का. 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार औद्योगिक विवादों के संबन्ध में निम्नलिखित कानून, बाबिल जिला केयोनजहार के प्रबन्धन के संबन्ध में निम्नलिखित और उनके कर्मचारियों के बीच, अनुबंध में निम्नलिखित औद्योगिक विवाद में औद्योगिक अधिनियम, पुबनेश्वर (ओडिशा) के पंचवट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-7-92 को प्राप्त हुआ था ।

[पंख्या एल—26011/15/89—आर्डीआर (मिस.)]

को. एम. डेविड, डेस्क अधिकारी

New Delhi, the 4th August, 1992

S.O. 2238.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Bhubaneswar (Orissa) as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of Orissa Minerals Development Co. Ltd., Barbil District Keonjhar and their workmen, which was received by the Central Government on 21-7-92.

[No. L-26011/15/89-IR(Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

INDUSTRIAL TRIBUNAL, ORISSA.

BHUBANESWAR

PRESENT :

Sri R. K. Dash, LL.B.,
Presiding Officer,
Industrial Tribunal,
Orissa, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 27 OF
1989(C)

Dated, Bhubaneswar, the 15th July, 1992

BETWEEN :

The Management of Orissa Minerals Development Co. Ltd., Barbil, District Keonjhar.

.. First Party-management.

AND

Their workmen represented through Keonjhar Mining Workers Union, At|P.O. Barbil, District Keonjhar.

.. Second Party-workmen.

APPEARANCES :

Sri M. C. Naik, Dy. General Manager(P)—For the first party-management.

Sri I. M. Bohara, General Secretary of the Union.—For the second party-workmen.

AWARD

The Government of India in the Ministry of Labour in exercise of powers conferred upon them by clause(d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) and by their Order dated 29th November, 1989 have referred the following disputes for adjudication by this Tribunal :—

- (1) Whether the demand of the Keonjhar Mining Workers Union, Barbil for regularisation of S|Sri Promod Patra, Lois Lakra, Jagabandhu Mahakud and Biswasnath Apat and for payment of equal wages alongwith other benefits at par with the corresponding

category of regular workmen of O.M.D.C. Ltd., is justified? If so, what relief are the workmen entitled to?

- (2) Whether the demand of the Keonjhar Mining Workers Union, Barbil for payment of equal wages and other benefits to Sri Guru Charan Munda and 16 others (workers of manganese section) at par with corresponding category of iron section workers of OMDC Ltd. is justified? If so, what relief are the workmen entitled to?

2. This case was posted to 8-5-92 for recording settlement. On that day representatives of both the parties filed a memorandum of settlement and prayed to pass an award in terms of the settlement. They submitted that they have already settled the dispute out of Court in the interest of industrial peace and harmony. The terms of the settlement were read over and explained to the parties to which they admitted to be true and correct. The settlement being fair is recorded. Hence, I pass this Award in terms of the settlement which do form part of the Award.

Dictated and corrected by me.

R. K. Dash, Presiding Officer.

FORM H

(See Rule 58)

Form of the Memorandum of Settlement

Name of Parties :

M/s. Orissa Minerals Development Co. Ltd.,
Barbil.

Vs.

Keonjhar Mining Workers Union, Barbil.

Representing Employer. Mr. M. C. Naik, Dy.
General Manager (P) O.M.D.C. Co.

Representing workman.—Mr. P. K. Mudali,
Secretary K.M.W. Union.

(2) Mr Indramani Behro, General Secretary
K. M. W. Union.

Short Recital of the Case :

The K.M.W. Union had raised an Industrial Dispute before the Asst. Labour Commissioner (C) Rourkela which ended in failure. Thereafter the said dispute No. 5(90)89-RKL-A dt. 22-6-89 has been referred for adjudication before the Presiding Officer, Orissa, Bhubaneswar vide Order No. L-26011/15/89 IR (Misc.) dt. 29-11-89 regarding equalisation of wages.

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Both the parties have disengaged at length on the reference of the Dispute and agreed as under :

The reference of the Dispute is as under.

Schedule

- (i) 'Whether the demand of Keonjhar Mining Workers Union, Barbil for regularisation of Sri Pramod Patra, Sri Lois Lakra, Sri Jagabandhu Mahakud and Sri Biswanath Apat and for payment of equal wages alongwith other benefits at par with the Corresponding Category of regular workmen of OMDC Ltd., is justified. If so, what relief are the workmen entitled to?
- (ii) Whether the demand of the Keonjhar Mining Workers Union, Barbil for payment of equal wages and other benefits to Shri Gurucharan Munda and 16 others (Workers of Manganese Section) at par with corresponding Category of Iron Section workers of OMDC Ltd., is justified. If so, what relief are the workmen entitled to?

4. In so far as the 1st part of reference of the dispute is concerned, Shri Pramod Patra, Lois Lakra, Jagabandhu Mahakud and Biswanath Apat have been regularised as the permanent employee of the Company as per the date mentioned below :—

Name	Date of regularisation
(i) Pramod Patra	1-9-90
(ii) Lois Lakra	1-9-90
(iii) Jagabandhu Mahakud	1-6-90
(iv) Biswanath Apat	1-9-90

The 1st party management has already mentioned the above facts before the Tribunal on 5-11-90.

5. That both the parties have mutually discussed regarding other benefits to the aforesaid 4 workmen and agreed as under :

- (i) Pramod Patra will be upgraded as Dak Peon in the Cat. III.
- (ii) Lois Lakra will be up-graded as per his eligibility subject to condition Cat. III.
- (iii) Jagabandhu Mahakud has already been up-graded as Tractor Driver in Cat. V.
- (iv) Biswanath Apat will be upgraded as Store Office boy/Canteen/Lab. Boy in Cat. III.

6. The Second party therefore do not press for the demand as per the reference.

7. In so far the second party of reference of the aforesaid dispute is concerned, both the parties have mutually discussed regarding Gurucharan Munda and 16 others (Workers of Manganese Section). The 1st party management has agreed to upgrade as mentioned against their names taking into account their suitability for the upgradation so that the dispute under reference is closed.

Name	Designation	Present Category	Revised Category with Basic Wages	Remarks
(1)	(2)	(3)	(4)	(5)
i. Gurucharan Munda	Mines Foreman	X	X	Issue is dropped.
ii. Purna Chandra Mahanta	—do—	IX	X Rs. 1200/-	To be upgraded
iii. R. K. Pradhan	—do—	X	X	Agreed to revise in proper fitment.
iv. R. K. Behera	—do—	IX	X Rs. 1200/-	To be upgraded.
v. Santosh Kumar Dutta,	Mining Mate	—	—	Already resigned.
vi. D. L. Rout	Clerk	IX	X Rs. 1200/-	To be upgraded
vii. Tulshi Mahanta	Clerk	IX	X Rs. 1200/-	To be upgraded.
viii. Md. Ayub	Security guard	—	—	Already retired.
ix. Durga Bahadur	—do—	—	—	Already retired
x. Tarun Ghosh	Supervisor	—	—	Issue is dropped.
xi. Gangedhar Gope	—do—	—	—	Already retired
xii. Md. Suman	—do—	—	—	Issue is dropped.
xiii. Makru Bodra	Blaster	—	—	Issue is dropped.
xiv. Sadhu Oram	Asstt. Cinema Operator	—	—	Issue is dropped
xv. Bodan Singh Kerai	Mining Mate	—	—	Already retired
xvi. Smt. Geeta Gope	Karim	I	II Rs. 455/-	To be upgraded.
xvii. Druba Charan Swain	Cook	II	III Rs. 650/-	To be upgraded.

8. The first party management agreed for up-gradation of the concerned Workmen w.e.f. 1-1-1992. The upgrade will be made which are made by today.

9. The second party therefore do not press for the demand as per reference in second part of the dispute.

10. That there were two different kinds of wages in respect of departmental monthly paid staff and daily rated employees applicable to Iron section and Manganese Section (Iron Staff & Manganese Staff).

11. That in order to remove the disparity in wages applicable to Iron staff and Manganese Staff, and to have a common scale of pay for both Iron staff and Manganese staff, a Tripartite Settlement has been arrived at before the Regional Labour Commissioner (Central), Bhubaneswar on 4th July, 1991.

12. That the aforesaid Tripartite Settlement is operative from 15th March, 1991. Covering 537 departmental monthly paid and daily rated employees working in both Iron and Manganese Section at Thakurani, Bhadrasai and Belkundi; Mines of O.M.D. Co. Ltd. This does not apply to the piece rated workers.

13. That both the Iron staff and Manganese staff are now put to common scale of pay and they are entitled for same Dearness Allowance and Variable Dearness Allowance and other benefits.

14. That as per the Tripartite Settlement dated 4-7-1991, the disparity in wages have been removed. They are now put in 10 common scales of pay keeping in view the years of experience, total emoluments drawn, nature of job being performed and qualification.

15. That the Tripartite Settlement dated 4-7-91 covering to 537 departmental monthly and daily rated employees is just and proper.

16. Both the first party management and second party workmen, therefore pray that the Order may be passed as per the terms of Settlement dated 4-7-1991, viewed before your Hon'ble Tribunal on 31st August, 1991 with a copy to union.

17. It is prayed by the both 1st party management of OMDC Ltd., and the Second party workmen that the Hon'ble Industrial Tribunal will be pleased to pass the Award as per the Tripartite Settlement dated 4-7-1991 arrived at before the Regional Labour Commissioner (C), Bhubaneswar, Annexure 'A' enclosed.

The Award for the aforesaid dispute may be passed on the following terms.

18. It is agreed to narrow down the difference in wages for 537 departmental staff working in Iron and Manganese Section and bring them together to common scales of pay applicable for both Iron and Manganese Staff.

19. This revision of scale of pay will cover to the present 537 departmental monthly paid and daily rated employees as on 15-3-91 and not piece rated employees working in both Iron and Manganese section at Thakurani, Bhadrasai and Belkundi Mines.

20. It is agreed to revise the existing 13 scales of pay for Iron Section and 11 scales of pay in Manganese Section. There will be 10 common scales of pay (categories) as mentioned below :—

- (i) Rs. 405-10-505-12-625-15-1075.
- (ii) Rs. 455-10-505-15-730-18-1180.
- (iii) Rs. 650-15-725-18-1085-20-1285.
- (iv) Rs. 700-18-1060-20-1360.
- (v) Rs. 800-18-980-20-1380.
- (vi) Rs. 850-20-1050-25-1425.
- (vii) Rs. 900—25-1150-30-1600.
- (viii) Rs. 950-30-1250-40-1730.
- (ix) Rs. 1000-35-1245-45-1830.
- (x) Rs. 1200-45-1650-55-2200.

21. The existing employees, as on roll of the Company dated 15-3-91 will be fitted within the revised 10 categories w.e.f. 15-3-92 as per Annexure 'A', while making fitment the total wages as on 14-3-91 comprising of present basic, adhoc, fixed dearness Allowance, V.D.A./F.V.C., Special Allowance if any, special pay if any, Gram Rebate if any, and servant allowance if any are taken into account.

22. It is agreed that while making fitment in the revised 10 categories the monthly paid staff and daily rated employees working in Iron Section and getting Iron scale of pay will get a minimum guarantee of Rs. 105 (Rupees One hundred five only) as also the monthly paid staff and daily rated employees working in Manganese section getting Manganese scale of pay will get a minimum guarantee of Rs. 130 (Rupees One hundred thirty only) as fitment benefit.

Since the existing Employees are fitted in the revised 10 categories from 15-3-91, the next yearly increment will fall due on 1-1-1992.

23. It is agreed that the departmental monthly paid staff fitted in the revised 10 categories will get a fixed Dearness Allowance Rs. 100 per month and balance amount of the existing gross emoluments are being treated as a part of revised basic V.D.A.

24(i) It is agreed that a part from new basic and fixed dearness allowance of Rs. 100 p.m. the monthly paid staff will also get V.D.A. The calculation of V.D.A. will be based on Consumer Price Index figure published by Labour bureau of Shimla Govt. of India, 1960—100 series (For 1960 Series Index figure to be arrived at by multiplying the linking factor of 493 to the Index figure 1982—100 series, as per Govt. of India Notification No. XXIII:60/221 dated 31-1-89. The base Index figure is 753 in 1960 series or 152-73(153) in 1982 series).

(ii) The V.D.A. will be paid @Rs. 0.78 per every point per month or Rs. 0.03 per day on rise or fall over the base index of 753(1960=100).

V.D.A. will be payable for the quarter mentioned below for both Iron and Manganese departmental monthly paid and daily rated staff.

V.D.A. payable

December, January, February,
March, April, May,
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June, July, August,
September, October, November.

Basing on the Index figure
for the preceeding quarter.

July, August, September,
October, November, December,
January, February, March,
April, May, June.

25. The settlement is applicable to the departmental monthly paid and Daily rated employees who are on roll of the Company as on 15-3-91.

26. The settlement supersedes to any earlier settlement/agreement arrived at in so far as the scale of pay/grade, adhoc increase in pay Food Value Concession paid, any personal pay or Special Allowance, Servant Allowance, gram rebate are concerned.

27. It is agreed that this settlement will be for a period of 4 years w.e.f. 15-3-91. However, after expiry of 3rd year it can be terminated as per the provision of the I.D. Act, 1947.

28. It is agreed that the rate of V.D.A. will not however, be below the rate of Special allowance notified by Chief Labour Commissioner(Central) from time to time under the M.W. Act, 1948.

29. While implementing the settlement if any anomaly arises, the same will be settled between the parties mutually failing which the parties are at liberty to refer the same to RLC(C), Bhubaneswar.

30. This settlement is made without prejudice to the Minimum wages as notified from time to time by the Central Government and applicable to the employees covered under this settlement.

(Sd./-)

30-1-92

(I. M. Behera)
General Secretary
Keonjhar Mining
Workers Union.

(Sd./-)

30-1-92

(Secretary)
Keonjhar Mining Workers Union.

(Sd./-)

30-1-92

(M. C. Naik)
Dy. G. M.(P)
1st party management.
O.M.D. Co. Ltd.

30-1-92

Witness

Sd/-

Asst. Manager(P)
O.M.D. Co. Ltd.,

Witness :

Manoranjan Sahw
Clerk, O.M.D. Co. Ltd.,
Jarbil.

नई दिल्ली, 3 अगस्त, 1992

का. प्र. 2239 —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 अनुसरण में, केन्द्रीय सरकार बाम्बे पोर्ट ट्रस्ट के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बम्बई-2 के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार की 28/7/92 को प्राप्त हुआ था।

[संख्या एल-31012/7/91-आईआर (मिस.)]

बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 3rd August, 1992

S.O. 2239.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Bombay II as shown in the Annexure in the industrial dispute between the employers in relation to the management of Bombay Port Trust and their workmen, which was received by the Central Government on 28-7-1992.

[No. L-31012/7/91-IR (Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 BOMBAY

PRESENT :

Shri P. D. Apshankar, Presiding Officer.

Reference No. CGIT-2/29 of 1992

PARTIES :

Employers in relation to the management of Bombay Port Trust

AND

Their workmen.

APPEARANCES :

For the employer—No appearance.

For the workman—No appearance.

INDUSTRY : Port and Docks **STATE :** Maharashtra

Bombay, the 10th July, 1992

AWARD

The Central Government by their Order No. L-31012/7/91-IR (M) dated 8-5-1992 have referred the following industrial dispute to this Tribunal for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947.

"Whether the action of the management of Bombay Port Trust in compulsorily retiring Shri Vithal Nana Kamble, Watchman, Security Department, w.e.f. 9-3-1989, is justified? If not, to what relief is the workmen entitled?"

2. After the said reference was received by this Tribunal on 19-5-1992, on 21-5-1992 this Tribunal received an application dated 20-5-1992 (Ex. 2) from General Secretary of the B.P.T. Railwaymen's Union. This letter states that :

"In this respect, we have to bring to your kind notice that the meanwhile, the Surface Transport Ministry, the Government of India has considered the appeal of Shri V. N. Kamble and allowed him to resume his duty with compensation of 75% of his total pay including all allowances.

In view of above, we have now no dispute to be raised before the Industrial Tribunal, Bombay, and hence we withdraw it."

Therefore, as the dispute in question is already mutually settled as above, the present reference stands disposed of. The parties to bear their own costs of this inference.

P. D. APSHANKAR, Presiding Officer

नई दिल्ली, 3 अगस्त, 1992

का. प्र. 2240 —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में, केन्द्रीय सरकार इंटरनेशनल एयरपोर्ट प्राथोरिटी आफ इंडिया, बम्बई के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बम्बई-1 के पंचपट को प्रकाशित करता है, जो केन्द्रीय सरकार की 28-7-92 को प्राप्त हुआ था।

[संख्या एल-11011/10/90-आईआर (मिस.)]

बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 3rd August, 1992

S.O. 2240.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bombay II as shown in the Annexure in the industrial dispute between the employers in relation to the management of International Airport Authority of India, Bombay and their workmen, which was received by the Central Government on 28-7-1992.

[No. L-11011/10/90-IR (Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 BOMBAY

PRESENT :

Shri P. D. Apshankar, Presiding Officer

Reference No. CGIT-2/21 of 1991

PARTIES :

Employers in relation to the management of International Airport Authority of India, Bombay

AND

Their workmen.

APPEARANCES :

For the Employer—Mr. Shamrao S. Patil, Advocate.

For the Workman—No appearance.

INDUSTRY : Aviation **STATE :** Maharashtra

Bombay, the 9th July, 1992

AWARD

The Central Government by their Order No. L-11011/10/90-IR (Misc.) dated 8-4-1991 have referred the following industrial dispute to this Tribunal for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947.

"Whether the action of the management of International Airports Authority of India, Bombay Airport, Bombay, in terminating the services of 25 workmen, as per the Annexure 'A' attached, is justified and legal? If not, to what relief the workmen concerned are entitled?"

2. After the said reference was received from this Tribunal in April, 1991, the advocate for the union appeared before this Tribunal on 20-8-1991. Thereafter, till today several adjournments were taken by the union to file its statement of claim, but did not file the Statement of Claim till today. Union had remained absent on the last two days, i.e. 8-6-1992, and 8-7-1992. The action of the management in question was challenged by the union. Therefore it was for the union to file the necessary statement of claim stating as to how that action is not just and proper. However, as noted above, no statement of claim has been filed by the union till today. The union did not also lead any evidence to show that the said action was unjust and illegal. The management had remained absent from time to time. It seems that the union is not interested in pursuing with the present reference. As such, for the said reasons the present reference stands disposed of.

The parties to bear their own costs of this reference.

P. D. APSHANKAR, Presiding Officer

नई दिल्ली, 3 अगस्त, 1992

का. प्रा. 2241.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) का धारा 17 के अनुसंधान में, केन्द्रीय सरकार भारतिय तेल निगम, मद्रास के प्रबन्धकों के सबब नियोजकों और उनके कर्मचारियों के बीच, अनुसंधान में निहित औद्योगिक विवाद में औद्योगिक अधिनियम, तमिलनाडु के पंचपट को प्रकाशित करता है, जो केन्द्रीय सरकार को 27-7-92 को प्राप्त हुआ था।

[संख्या एल-30012/18/86-डी-III (बी)]

बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 3rd August, 1992

S.O. 2241.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Tamil Nadu as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Oil Corporation, Madras and their workmen, which received by the Central Government on the 27-7-92.

[No. L-30012/18/86-D.III(B)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU MADRAS

Thursday, the 26th day of March, 1992

Present :

THIRU M. GOPALOSWAMY, B.Sc., B.L., Industrial Tribunal.

INDUSTRIAL DISPUTE NO. 1 OF 1989

(In the matter of the dispute for adjudication under section 10(1)(d) of the Industrial Disputes Act, 1947 between the workman and the management of Indian Oil Corporation Limited, Madras and another).

BETWEEN

Thiru A. T. Syedharan, No. 6, Purameshwari Nagar, Ennore High Road, Madras-600 081

AND

1. The General Manager, Indian Oil Corporation Limited, Nudamakkam High Road, Madras-600 034.
2. B. C. Caterers, No. 1, Rolaiappan Street, Madras-21 represented by Proprietor N. K. Balan.

APPEARANCE :

Order No. L-30012/18/86-P.III(B), dt. 6-1-1988 of the Ministry of Labour, Government of India, New Delhi.

This dispute coming on for final hearing on Tuesday, the 24th day of September, 1991 upon perusing the reference, claim and counter statements and all other material papers on record and upon hearing the arguments of Thiru V. K. Sethukumar, Advocate appearing for the workman and of Tvl. T. S. Gopalan, S. Ibrahim Kalifullah, S. Kevindran and N. C. Sreenivasavardhan, Advocate appearing for Management No. 1 and Management No. 2 being absent and set exparte and this dispute having stood over till this day for consideration this Tribunal made the following.

AWARD

This dispute between the workman and the management of Indian Oil Corporation Limited, Madras and another arises out of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in its Order No. L-30012/18/86-D.III(B), dated 6-1-1988 of the Ministry of Labour for adjudication of the following issue :

"Whether the action of the management of Indian Oil Corporation Ltd., in respect of Lube Blending Plant, Drum Plant, Storage and Distribution Plant, Madras in terminating the services of the workman Shri A. T. Syedharan, w.e.f. 31-12-1982 though the then canteen contractor Shri M. K. Balan and refusing to reemploy him in employment is justified? If not, to what relief the said workman is entitled to?"

2. The Petitioner alleges in the claim statement as follows : Petitioner was employed as a khalasi in the canteen run by the Respondent, who is ranked subsequently as 1st Respondent. The 2nd Respondent B. C. Caterers was impounded as ordered in Misc. Appln. No. 104 of 1988, dated 1-8-1988. Petitioner joined the said post on 1-1-1978 and was working in the canteen on Rs. 16 as daily wage. He received the wages through a middle man (2nd Respondent) who is a contractor under the 1st Respondent. He was denied employment in the year 1982. His representations have not yielded any fruit. Denial of employment to the Petitioner is illegal and unjust. In the conciliation proceedings before the Central Labour Commissioner, the 1st Respondent Indian Oil Corporation contended that the Petitioner was not an employee under it but was an employee of the Canteen Contractor Mr. M. K. Balan (2nd Respondent). The 1st Respondent's contention that there is no employer-employee relationship between the Petitioner and itself is wrong. The 1st Respondent is liable to reinstate the Petitioner in service and give him all benefits, back wages and continuity of service.

3. The 1st Respondent Indian Oil Corporation through its Senior Industrial Relations Manager states as follows : A canteen has been established by the 1st Respondent for catering to the staff of the plants of the Corporation. The entire management of the canteen was left to a Contractor by name B. C. Caterers belonging to Mr. Balan. The said contract was executed on 23-11-1981. The 1st Respondent did not employ the Petitioner at any time. The Petitioner has never worked as Khalasi under the 1st Respondent. The Petitioner was an employee of the catering contractor (i.e. the 2nd Respondent). The claim is liable to be dismissed.

4. The 2nd Respondent who is the canteen contractor has been set exparte.

5. The point for determination is as follows :

"Whether the action of the management of Indian Oil Corporation Ltd., in respect of Lube Blending Plant Trum Plant, Storage and Distribution Plant, Pendarpet, Madras in terminating the services of the workman, Shri A. T. Sreedharan on w.e.f. 31-12-1992 though the then canteen contractor N.E. Balan refusing to re-employ him in employment is justified? If not, to what relief the said workman is entitled to?"

6. The Petitioner examined himself as W.W.1. The 1st Respondent examined its Personnel Deputy Manager (retired) as M.W.1 Exs. W-1 to W-9 and M-1 to M-3 were marked.

7. The evidence of M.W.1 Thiru Balachandran occupied with Ex. M-1 Contract under which Thiru N. E. Balan was appointed as the contractor for running the canteen at the Plants belonging to the 1st Respondent reveals that for the benefit of the workers of the Plants namely selling of food articles within the factory premises, a contractor was appointed to maintain the canteen at his own risk by receiving certain facilities, such as premises, power supply and other articles from the 1st Respondent. The terms and conditions are elaborately set out in clause (4) of the agreement Ex. M-1 Sub-clause (h) of clause (4) clearly says that the contractor should employ the necessary labour at his own costs and responsibility. Sub-clause (a) makes a further elaboration saying that the Corporation is not liable, but only the contractor is liable for all payment to the employees of the canteen. All other statutory obligations and payments should also be met only by the owner of the canteen.

8. The argument put forward by the petitioner on the strength of Section 46 of the Factories Act cannot be of any avail. The case relied on by the petitioner Baraspur Mills Ltd. vs. Ramanlal and others decided by the Supreme Court and reported as A.I.R. 1973 Supreme Court 2297 dealt with a special definition of the word 'employee' given in Bombay Industrial Relations Act, 1946, which stated that even employees of a contractor or middleman engaged by the employer, when such middleman is engaged to do any part of work belonging to the employer, the employee though employed by the middleman becomes the employee of the principal employer. In the instant case, the Petitioner has not relied upon any such statute obtaining in Tamilnadu. Section 46 of the Factories Act only enjoins upon the employer the duty to provide canteen facility. The rules framed under the Factories Act do not prohibit the employer from providing a canteen to the workers through a contractor by entering into an agreement. The case decided by the Madras High Court, workmen of Ashok Lalyand Ltd., Madras versus Ashok Lalyand Ltd., Madras and reported as 1991—II L.L.J. 12 upholds the legal position that a co-operative society of the employees of a factory is a separate entity different from the employer and that the employees of the society cannot be treated as employees of the employer-factory. In the present case, the 1st respondent is a separate establishment as against the 2nd respondent. The Petitioner has not produced any evidence to prove that he was a first employed by the 1st Respondent and not by the 2nd Respondent. I therefore hold that the Petitioner Thiru A. T. Sridharan is not an employee of the 1st Respondent and that he was only an employee of the 2nd Respondent who has closed down the canteen. It follows that the Petitioner is not entitled to any relief. This point is answered accordingly.

9. In the result, an award is passed dismissing the claim of the Petitioner Thiru A. T. Sridharan. No costs.

Dated, this 26th day of March, 1992

THIRU M. GOPALASWAMY, Industrial Tribunal

List of Witnesses and Exhibits in LT. 1/88 :

WITNESSES EXAMINED

For Workman :

W.W.1 Thiru A. T. Sridharan.

For Management :

M.W.1 Thiru S. P. Balachandran.

DOCUMENTS MARKED

For Workman :

Ex. W-1/5-8-83 Letter from Petitioner-workman to the Labour Officer-Circle-I, Madras-1, regarding non-employment and illegal termination from continuous service in the Management-Corporation (xerox copy).

W-2/24-10-83 Letter from Petitioner-workman to the Labour Officer-Circle-I, Madras-1, regarding non-employment and illegal termination from continuous service in the Management-Corporation (xerox copy).

W-3/30-8-83—Letter from Management-Corporation to the Labour Officer-Circle-I, Madras-1 regarding non-employment of Thiru A. T. Sridharan (Xerox copy).

W-4/25-7-84 Notification by the Govt. of Tamil Nadu, Labour Department in O.O. Ex. No. 1650 (Industrial Dispute referred for adjudication between India Oil Corps. Ltd., and M/s. B.C. Caterers to the II Addl. Labour Court, Madras) (xerox copy).

W-5/22-2-85—Award of II Additional Labour Court, Madras in I.D. No. 491/84 (xerox copy).

W-6/19-9-86 Conciliation Failure Report (xerox copy).

W-7/Price List of the Management's Canteen with effect from 1-4-1985 (xerox copy).

W-8/20-6-86 Price List of the Management's Canteen with effect from 16-6-1986 (xerox copy).

W-9/-Do- Newspaper publication in the 'THE HINDU' dt. 26-12-90.

For Management :

Ex. M-1/23-11-81 Copy of agreement between the Management Corporation and Thiru M. K. Balan.

M-2/1-1-85 Letter from Tube Blending Plant of Management Corporation to M/s. B.O. Caterers Canteen Contractors, Madras-81 regarding notice of termination of contract.

M-3/1-2-85 Letter from Lube Blending Plant of Management-Corporation to M/s. B.C. Caterers, Madras-81 deciding to extend the canteen contract by one month.

M-4/1-3-85 Letter from Lube Blending Plant of Management Corporation to M/s. B.C. Caterers, Madras-81 deciding to extend the canteen contract by one month.

M-5/29-3-85 Circular of the Management-Corporation terminating the licence to run the canteen by M/s. B. C. Caterers, Madras-81.

M-6/5-12-84 Imprest Cash voucher for Rs. 72 for having supplied refreshment to the trainees in the Management-Corporation (In Book).

M-7/-Do- Imprest Cash voucher for Rs. 70 for having supplied the boiled water to the Management-Corporation (In Book).

M-8/5-12-84 Statement showing employees strength during 1-1-78, 1-1-79, 1-1-80, 1-1-81 & 1-1-82.